

STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 99-AFC-8
BLYTHE ENERGY PROJECT)
(Blythe Energy, LLC))
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, OCTOBER 10, 2000

3:00 P.M.

Reported by:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Robert Laurie, Associate Member

STAFF PRESENT

Edwin Bouillon, Jr., Hearing Officer

Terry O'Brien, Advisor

Lisa De Carlo, Staff Counsel

Lance Shaw, Project Manager

Richard Sapudar

Charles Vartanian

Richard Anderson

James Adams

Gabriel Behymer

PUBLIC ADVISER

Roberta Mendonca

REPRESENTING THE APPLICANT

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John P. Grattan, Attorney

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Jeffrey G. Harvey, Ph.D., Group Manager

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Sacramento, CA 95825

ALSO PRESENT

Melinda Rivasplata, Principal Environmental
Planner
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 3:00 p.m.

3 PRESIDING MEMBER KEESE: I'd like to
4 call this conference of the Blythe Energy Project
5 to order. I'm Bill Keese, and I have Terry
6 O'Brien on my right. The other Member of the
7 Committee is Bob Laurie. And our Hearing Advisor
8 Ed Bouillon.

9 I'd like to introduce at this time the
10 participants. The applicant, Scott Galati, are
11 you going to handle this?

12 MR. GALATI: Yes, thank you.

13 PRESIDING MEMBER KEESE: Would you like
14 to introduce your team.

15 MR. GALATI: Yes, my name is Scott
16 Galati. On my left is Tom Cameron; he's the
17 Project Manager for Blythe Energy. I also have
18 behind me is my partner, John Grattan; and also
19 Mr. Jeff Harvey with Greystone, the environmental
20 consultant for the applicant.

21 PRESIDING MEMBER KEESE: Thank you.
22 Staff, Lance Shaw.

23 MR. SHAW: My name is Lance Shaw, the
24 Siting Project Manager for the Energy Commission.
25 With me to my right is Lisa DeCarlo, Staff

1 Counsel; also Dick Anderson, biological resources;
2 Gabriel Behymer, air resources; Melinda
3 Rivasplata, land use; James Adams, traffic and
4 transportation.

5 PRESIDING MEMBER KEESE: Thank you. And
6 we have present, also, our Public Adviser, Roberta
7 Mendonca. Did you -- and I believe we have a line
8 available for call-in? Do we have anybody that we
9 are --

10 MS. MENDONCA: Not that I know of, yet.

11 PRESIDING MEMBER KEESE: -- convinced is
12 going to call in? Thank you. And we have an
13 intervenor, CURE. Is there anybody here
14 representing CURE? Thank you, --

15 HEARING OFFICER BOUILLON: If I may ask
16 applicant, what's CURE's status? Do they intend
17 to participate, or do you know?

18 MR. GALATI: To our understanding they
19 do not intend to participate.

20 PRESIDING MEMBER KEESE: Thank you. We
21 are conducting this jointly with the Western Area
22 Power Administration. Do we have anybody from the
23 Western Area Power Administration present?

24 MS. MENDONCA: There is an additional
25 intervenor. Her name is Carmella Garnica,

1 G-a-r-n-i-c-a. And she filed her petition to
2 intervene on September the 29th. She is not
3 attending today.

4 HEARING OFFICER BOUILLON: We're aware
5 of that and we'll cover that in a moment.

6 PRESIDING MEMBER KEESE: Thank you. As
7 I mentioned, we have a telephone call-in system
8 for others if they intend to participate. And we
9 will acknowledge their participation when it shows
10 up.

11 The Committee scheduled today's status
12 conference in a notice of September 29, 2000.
13 Notice of the location was provided to over 100
14 people appearing on various mailing lists for this
15 proceeding, and a media advisory was also provided
16 to local electronic and print news media.

17 The purpose of today's conference is to
18 discuss the items set forth in the notice. These
19 are the status of discovery, data responses and
20 requests, scheduling matters including dates for
21 required determinations by other agencies,
22 coordination with other agencies, current and
23 future events, including release of the staff's
24 final assessment of the project, and other
25 relevant matters.

1 Participants should keep in mind that
2 this is a status conference only, and that we are
3 not taking evidence on which to base a decision.
4 Participants should also remember that this
5 process might extend for a number of months, and
6 that there will be ample opportunities to voice
7 your views of the project.

8 Applicant, staff and the formal
9 intervenors will be given an opportunity to
10 address the matters mentioned previously.

11 There is a petition to intervene by
12 Carmella Garnica, a local Blythe resident. It
13 will be granted, but the hardship status is still
14 under consideration.

15 At this time I would like to ask Roberta
16 to make a statement about her efforts in this case
17 to date. Ms. Mendonca.

18 MS. MENDONCA: Thank you. The Public
19 Adviser began outreach in the community in Blythe
20 before actually the first informational hearing.
21 And while at the informational hearing also went
22 out and did some site visiting.

23 It was obvious to me that across the
24 highway from the proposed site was a neighborhood
25 that is commonly called Mesa Verde; however on the

1 map it's called Nicholas Warm Springs.

2 And this particular group of homes did
3 not receive notice. So the Public Adviser was
4 able to garner addresses and did a mailing to that
5 community asking if they had any interest in being
6 on our mailing list and would they be interested
7 in participating in an additional informational
8 presentation put on by the Public Adviser.

9 So there were 71 households that were
10 involved. The Public Adviser received nine
11 responses. And as a result of those responses
12 went back into the Blythe community; had a
13 community meeting in the afternoon downtown, and
14 in the evening at the airport.

15 After that we had one petition to
16 intervene that has come, I guess, through that
17 contact.

18 Thank you very much.

19 PRESIDING MEMBER KEESE: Thank you, Ms.
20 Mendonca.

21 We will now proceed to a general
22 discussion of the data responses, scheduling, and
23 everything. Mr. Bouillon, would you like to lead
24 us through this, please.

25 HEARING OFFICER BOUILLON: Whatever

1 you --

2 PRESIDING MEMBER KEESE: Feel free.

3 HEARING OFFICER BOUILLON: I'd first
4 like to have the applicant make a presentation,
5 give a brief summary of the document you submitted
6 on Friday. And maybe a few comments about how
7 workable your schedule is.

8 And I'd particularly like to know
9 something about the status of the air quality and
10 the final determination of compliance and what the
11 scheduled date for that is, as well as the
12 biological opinion by the U.S. Fish and Wildlife
13 Service.

14 MR. GALATI: Okay, thank you. Let's
15 start with the last questions first. The
16 biological opinion. There was a workshop on
17 October 3rd in which U.S. Fish and Wildlife
18 representatives, CDFG, and Western and CEC Staff,
19 as well as the applicant, participated in to
20 discuss a draft biological assessment that was
21 prepared by Western and sent to U.S. Fish and
22 Wildlife Service.

23 And the purpose of that workshop was to
24 coordinate with the agencies. What happened at
25 that workshop was the draft biological assessment

1 needed some additional work which we understand
2 Western, along with the applicant, is finalizing
3 that to specifically address some data needs for
4 U.S. Fish and Wildlife Service.

5 But U.S. Fish and Wildlife Service
6 remains committed to reviewing it quickly, as well
7 as coordinating with staff regarding the
8 conditions that would come out in the final staff
9 assessment to make sure that there was some
10 consistency between the biological opinion and the
11 staff's proposed conditions of certification.

12 At that time the CDFG representative
13 made a commitment to also work with staff and with
14 the U.S. Fish and Wildlife Service to try to
15 coordinate the conditions for that consistency
16 finding as well.

17 Both representatives of U.S. Fish and
18 Wildlife Service and CDFG said that they would be
19 available either through a letter or through
20 testimony at an evidentiary hearing to discuss in
21 front of the Commission the consistency of what
22 the staff comes up with in its conditions of
23 certification with the work they're doing, as
24 well.

25 So that's the current status of the

1 biological opinion. We don't have a date when
2 that will actually be finished, but it appears
3 that we will have some consistency determinations
4 with the conditions that we hope the Commission
5 will continue to go forward on.

6 With respect to the air quality issues,
7 we understand that the final determination of
8 compliance will be finalized this week. It may
9 come out as early as Friday. It may be as late as
10 Tuesday of next week due to the noticing
11 procedures.

12 We understand that that final
13 determination of compliance will address the
14 transfer issue. There are currently ERCs that are
15 being transferred from South Coast. We're
16 proposing that they be used from South Coast.
17 Mojave has approved the transfer and has approved
18 the offset and interdistrict ratio.

19 And we're waiting for the approval of
20 the South Coast. We understand that that hearing
21 would be on November 17th. But the final DOC is
22 going to be issued this week or early next.

23 If there are no questions on those
24 subjects, our general presentation would consist
25 of first we'd like to commend staff in working

1 very diligently throughout the PSA workshop.

2 When the PSA came out September 1, 2000,
3 there were significant data holes, there were
4 significant questions that needed to be responded
5 to. And staff provided an opportunity the
6 applicant, through a public workshop setting, to
7 be able to discuss those issues. And we made
8 quite a bit of progress in resolving many many
9 issues.

10 And contrary probably to the couple of
11 documents that you see in front of you, filed in
12 anticipation of this hearing, we think the issues
13 are relatively minor and focused compared to where
14 we were less than a month ago.

15 Probably our first issue where we have
16 some disagreement with staff and we think that it
17 probably can be worked out has to do with the
18 water conservation offset program. And I have Mr.
19 Jeff Harvey from Greystone who worked on that
20 program for quite some time if the Committee has
21 any questions regarding that at this hearing. If
22 not, we'll be prepared to file that with our
23 testimony.

24 But the water conservation offset
25 program basically is an accounting program to

1 account for water that is currently allocated to
2 Palo Verde Irrigation District as part of their
3 entitlement and administered by the U.S. Bureau of
4 Reclamation.

5 We have designed a water conservation
6 offset program that the Bureau of Reclamation has
7 said meets any of their concerns, and the Palo
8 Verde Irrigation District has said meets their
9 concerns.

10 COMMISSIONER LAURIE: Does staff
11 disagree with those views?

12 MR. GALATI: I think staff can
13 articulate better, but my understanding of where
14 the disagreement is, is how the use of that water
15 conservation offset program creates any other
16 additional land use impacts, such as growth-
17 inducing impacts.

18 How the program works is there will be
19 652 acres under the water conservation offset
20 program that would either be seasonally fallowed
21 or actually retired from irrigation. And the
22 question is whether or not that is a growth-
23 inducing impact, and whether or not this project
24 should mitigate for any future growth that may
25 occur for lands brought out of production.

1 COMMISSIONER LAURIE: Well, they also
2 argue that it is a substantial impact on the
3 reduction of agricultural lands, is that correct?

4 MR. GALATI: Yeah, their view is that
5 there is significant impact in the PSA. It wasn't
6 brought out in the status report, so I'm not sure
7 whether we worked through that issue or not.

8 We think that it's not a significant
9 impact. And unfortunately it's somewhat
10 complicated, based on different types of lands of
11 which the program would affect. Mr. Harvey can
12 address that.

13 COMMISSIONER LAURIE: Mr. Galati, the
14 primary source of water is from an aquifer, is
15 that correct?

16 MR. GALATI: That's correct.

17 COMMISSIONER LAURIE: And does the
18 aquifer exist only on the lands of the applicant?

19 MR. GALATI: No, it does not. It is
20 regional.

21 COMMISSIONER LAURIE: Okay. And to what
22 extent, in your view -- I'm going to ask this of
23 staff, as well -- has the impact on the regional
24 aquifer been examined?

25 MR. GALATI: Let me have Jeff Harvey

1 answer that, because there was a complex draw-down
2 model done, and that might answer your question as
3 to the actual impact from the groundwater program.

4 COMMISSIONER LAURIE: Okay, well, let me
5 ask the Chairman if it's satisfactory to have this
6 discussion?

7 PRESIDING MEMBER KEESE: Since it looks
8 like some of the issues are coming to closure I
9 think it's fine that we have the discussion.

10 DR. HARVEY: Good afternoon, and thank
11 you. I'm Jeff Harvey, the Group Manager for
12 Greystone Environmental Consultants. Here in
13 Sacramento we have been the lead for the
14 environmental permitting for the project.

15 On your specific question regarding
16 water I don't believe that we have an issue with
17 staff any longer about that. They did ask many
18 questions about the aquifer and about the
19 potential draw-down effects from our wells on the
20 regional aquifer.

21 And we have supplied information as
22 recently as September that was, based on the
23 workshops that we had in Blythe, a specific
24 analysis of draw-down was requested, using data
25 points from the nearest local wells that are still

1 in use.

2 We did provide that analysis. That
3 analysis concluded that over the 30- or 40-year
4 period that was studied for the project we would
5 have about .8 foot draw-down regionally on the
6 aquifer.

7 And that was the conclusion of staff in
8 their report, I believe indicated had been a
9 satisfactory analysis.

10 COMMISSIONER LAURIE: What are some of
11 the other uses of this aquifer water? Are there
12 agricultural uses?

13 DR. HARVEY: Primarily agricultural uses
14 by volume of water. There is also a well that
15 supports the city's industrial and domestic uses
16 at the airport, itself.

17 There's another well to the north that's
18 actually hydrologically across a substantial wash,
19 and it's not directly linked. It's several miles
20 away, but for a golf course. That's one of the
21 major wells.

22 And then there are some municipal uses
23 up on --

24 COMMISSIONER LAURIE: Would you be the
25 largest user?

1 DR. HARVEY: No, I believe that -- we
2 might be the largest single user, but in the
3 aggregate, agriculture would be the largest user,
4 irrigated agriculture on the mesa.

5 COMMISSIONER LAURIE: Can you translate
6 the amount of water usage into acrefeet for me?

7 DR. HARVEY: 3000 acrefeet per year is
8 the maximum water use of the project.

9 COMMISSIONER LAURIE: And who has
10 jurisdiction over the use of that aquifer water?
11 Does the District have legal jurisdiction over who
12 may utilize the aquifer water?

13 DR. HARVEY: No, they don't. It's a
14 complicated answer to what seems like a simple
15 question. In California groundwater is not
16 regulated, and so there is no jurisdiction that
17 the Palo Verde Irrigation District has over area
18 wells.

19 And they've made it very clear in all of
20 our discussions with them, we've worked with them
21 for almost two years to get them to where we are
22 now in agreement on our water conservation offset
23 program, and they weren't concerned about the
24 water use, and they weren't concerned about either
25 the volume or the use of water.

1 What they were concerned about was that
2 they did not want any appearance that they would,
3 by approving our water conservation offset
4 program, be asserting jurisdiction over
5 groundwater; that they clearly had never taken
6 over any other wells, had no intention to take
7 over anybody's wells now or in the future.

8 And so they only recognized -- let me go
9 one step further before I come back to what PVID's
10 decision was -- the Bureau of Reclamation is the
11 watermaster on the Colorado River under Supreme
12 Court decree in which the water, the surface
13 waters of the Colorado River are allocated to the
14 lower basin states, Arizona, Nevada and
15 California.

16 Within California there are seven
17 parties that divide the waters allocated to
18 California; and then Arizona and Nevada get their
19 own amounts. I can give you those amounts if
20 you're interested. A total of 4.4 million
21 acrefeet for California.

22 The Palo Verde Irrigation District is
23 the number one water rights holder, and they have
24 an unquantified right to water. They divert at
25 one end, and then their drainage at the other end.

1 So they have a diversion, less return is the
2 accounting for their water use.

3 They have two levels of water use.
4 Priority one water, which is the water they use on
5 104,000 acres on the valley floor, the Palo Verde
6 Valley. And then an additional 16 acres on the
7 mesa lands, which is where the -- I'm sorry,
8 16,000 acres on the mesa, which is where the power
9 plant is located, that they have a priority 3
10 water entitlement to.

11 The Bureau of Reclamation, as
12 watermaster, has a model that it's developed which
13 is what is now referred to as the accounting
14 surface, in which they had tried to determine the
15 relationship of regional groundwater to surface
16 water in the river.

17 It is right now a model; it is a
18 developing policy. They've been working with Palo
19 Verde Irrigation District and other water users up
20 and down the river for more than a decade now.
21 They believe they are within about two years of
22 actually developing a policy whereby they would
23 regulate groundwater users relative to that
24 surface water.

25 What their claim is, is that the

1 groundwater at a certain level is hydrologically
2 connected to the river, therefore withdrawals from
3 that groundwater should be accounted for as part
4 of the surface water entitlements.

5 COMMISSIONER LAURIE: Well, because
6 we're not doing testimony here today, let me just
7 note that the testimony in regards to water will
8 be of interest and concern to me during the course
9 of the evidentiary hearing.

10 DR. HARVEY: I appreciate that.

11 COMMISSIONER LAURIE: Often it is much
12 easier, that is we have a will-serve letter from a
13 district saying that according to our plans we
14 have this amount of water to spend, and this is .1
15 of 1 percent of that amount of water. And we find
16 there's no impact. And we, the local district,
17 hereby indicate that we plan to serve.

18 That's not our situation here. So, I
19 think the determination of water impacts gets to
20 be more complicated.

21 I'm not suggesting at all one way or
22 another that I'm going to have a problem with the
23 evidence as currently exists. All I'm telling you
24 is that it will be examined closely by myself.

25 So, please do your best to provide

1 testimony that is as straightforward and
2 noncomplex as possible. I understand that the
3 issue is a complex one.

4 DR. HARVEY: I appreciate your concern,
5 Commissioner Laurie, and we have shared it. And
6 that's why we've been two years sorting out this
7 issue and working very closely with the Bureau of
8 Reclamation and with the Palo Verde Irrigation
9 District to get to where we are now, a point where
10 both of those agencies agree that our use of the
11 water and the accounting offset for it, with this
12 agricultural land retirement or fallowing, one or
13 the other scheme, is acceptable for ameliorating
14 their concerns.

15 COMMISSIONER LAURIE: Well, I know some
16 kind of model exists, because I look, for example,
17 at Palm Springs, which feeds off an aquifer. And
18 how they determine the supply/demand ratios and
19 the availability of water I have no idea because
20 I've never examined an environmental document for
21 any development in Palm Springs.

22 But I think the issue is much the same
23 one. And my concern, of course, would be that the
24 draw-down does not affect other property
25 interests.

1 DR. HARVEY: We also share that concern,
2 and have done considerable groundwater modeling in
3 addition to the accounting surface model that the
4 Bureau has, looking at those local impacts beyond
5 the regional impacts which were a separate level
6 of concern.

7 Just for your information, Palm Springs
8 water source and groundwater are entirely
9 separate, hydrologically no connection.

10 COMMISSIONER LAURIE: Yeah, no, I'm not
11 suggesting that the two are connected. Thank you.

12 MR. O'BRIEN: Mr. Harvey, I've got a
13 couple of questions for you, along water.

14 First of all, is any of the groundwater
15 that is going to be used for the project
16 contaminated?

17 DR. HARVEY: No, it is not. Another
18 good question. There was a question that arose
19 because there is a waste dump site, looks like
20 household garbage from the barracks from the
21 airport use during World War II. It was the site
22 of Patton's training for the Afrika Troops. And
23 there are mounds. It's not a landfill where they
24 filled in a site, it is just mounds of waste
25 material that had been mixed up with dirt, that

1 are a few hundred feet off the northwest corner of
2 our power plant site.

3 And because those mounds existed there
4 was a question about what they could contain. In
5 response to that we did do two water quality
6 samples.

7 One at a well that we drilled for the
8 investigations for this project at the northwest
9 corner of the property closest to those mounds.

10 And then another well that was existing
11 at a 1970's mobile home site at the south end of
12 the property.

13 So existing well and new well. Both of
14 those water samples, full battery of water quality
15 constituents, and done at the direction of staff.
16 And all of them came up with no constituents above
17 any state or federal drinking water standards
18 contained, and no indication or evidence that
19 there was any kind of a contaminant plume that
20 would be attributable to any of that dump site, or
21 anywhere else.

22 MR. GALATI: If I could point out, Mr.
23 O'Brien, during the PSA workshops we also agreed
24 with staff to have a condition of water monitoring
25 for the water that would be used to insure that

1 that conclusion that we've come up with here is
2 also achieved in practice.

3 DR. HARVEY: One other thing I might
4 add, Mr. O'Brien, the water under the mesa is
5 different than the water under the valley in its
6 chemical makeup. It is very high in total
7 dissolved solids, TDS, over 1000 ppm. Water in
8 the valley is 600 to 800 ppm, much more similar to
9 the river, as you would expect.

10 In the valley you have 104,000 acres
11 that have been irrigated for 80 to 100 plus years
12 in constant irrigation application with fresh
13 Colorado River water. And that underlying
14 groundwater is therefore of a higher quality than
15 what occurs under the mesa.

16 So much so that the Palo Verde
17 Irrigation District would argue that they are
18 distinct groundwater bodies. They've had an
19 ongoing debate with the Bureau of Reclamation
20 about that accounting surface model, based in part
21 on the chemical differences between mesa
22 groundwater and valley groundwater.

23 There are no exotic contaminants, but
24 the water is not fresh water by drinking water
25 standard definition.

1 MR. O'BRIEN: Thank you. Another
2 question. In terms of the water conservation
3 offset program, and staff can feel free to jump in
4 on the answer to this, but is the intent of the
5 program to basically balance the amount of water
6 that the project would use with the amount of
7 water that would be used, but for the fact that
8 certain land is going to be taken out of
9 agricultural production?

10 Is that the intent, such that if you
11 will, using an air quality analogy, you might have
12 zero net water usage?

13 DR. HARVEY: That is the intent. And
14 the offset is from land that had been previously
15 irrigated and could be irrigated yet by virtue of
16 the nature of the soil, and of having an
17 entitlement to Palo Verde Irrigation District
18 water falling within the 16,000 acres that is
19 subject to Palo Verde Irrigation District's
20 priority 3 water right.

21 Another way to put that is the 16,000
22 acres that are entitled to be irrigated under
23 PVID, we would seasonally fallow or retire 652
24 acres, leaving the 15,438 acres available.

25 So it will actually be counted against

1 directly against their entitlement. And those
2 lands that could have been irrigated will be
3 retired from irrigation.

4 And just to clarify, the District
5 requested that we retire lands if we involve lands
6 that were on the mesa, on the valley floor, where
7 they have their priority 1 lands that they
8 consider to be their prime lands, they requested
9 that we involve those lands, unless they were very
10 specific lands that are marginal along the river
11 that they consider to be problematic lands.

12 They would prefer then that we did the
13 rotational fallowing scheme where we took twice as
14 much land as we needed, and at any given time half
15 of it would be fallowed, the other half for
16 production, and on a rotational basis.

17 So that's where we have, if we involve
18 valley floor lands it's a rotational fallowing; if
19 we involve mesa lands, it would be land
20 retirement.

21 MR. O'BRIEN: Okay, and one final
22 question. To the extent that the groundwater is
23 not contaminated, then I would assume that it
24 would qualify under 7558 of the State Water
25 Resources Control Board policy as being fresh

1 inland water.

2 And I can't remember from the staff's
3 PSA analysis, but if it wasn't included, one would
4 expect in the FSA that issue to be addressed in
5 terms of there are no other feasible water sources
6 to be used for the cooling of the power plant.

7 DR. HARVEY: The answer to the question
8 is it wouldn't qualify because the TDS is too
9 high.

10 MR. O'BRIEN: It's too high?

11 DR. HARVEY: That's number one. And
12 number two, there is some discussion in current
13 thinking that whether groundwater is part of that
14 inland cooling plan or not, but we don't have to
15 reach that discussion, because again, the TDS is
16 too high. It's over 1000.

17 HEARING OFFICER BOUILLON: Mr. Cameron,
18 were you done? Who was doing the presentation
19 originally?

20 MR. GALATI: Oh, I'm sorry, I apologize.
21 Just making a note.

22 The other issues that are remaining that
23 are outstanding is the airport, consistency with
24 the airport land use. Which we'll call it CLUP,
25 the comprehensive land use plan for the Blythe

1 Airport.

2 The project is over a mile away from the
3 airport, but it falls within a safety zone called
4 an extended runway zone. And just in plant view,
5 if you could just imagine the runway ends, if you
6 were to extend the centerline and a certain number
7 of feet off the centerline, the project is within
8 that area.

9 And where the issue comes is airplanes
10 making their approach to the airport to land at
11 that runway, as well as future development plans
12 to extend the runway, whether or not this would
13 interfere.

14 Now, the project is 261 feet off the
15 centerline, that's the first thing. The second
16 thing is there is a surface that the FAA, and I
17 think staff can probably speak to this more
18 clearly than I can, that deals with defining an
19 approach. No component of the project interferes
20 or penetrates that surface.

21 The Riverside County Airport Land Use
22 Commission has to make a finding -- or even
23 involved in this for the simple reason that the
24 City of Blythe general plan doesn't comply, isn't
25 consistent with the airport land use plan. As

1 well as Riverside County is not consistent with
2 the airport land use plan.

3 COMMISSIONER LAURIE: That's
4 interesting, because by law airport land use plans
5 must be consistent with the county plan.

6 MR. GALATI: Correct. And because
7 there's no consistency, and I'm not sure which
8 came first, and which deviated, but they are no
9 longer consistent.

10 The Airport Land Use Commission then
11 sits, and not undermining their authority in any
12 way, shape, or form, but it's mostly advisory at
13 this point, since they don't have any land use
14 jurisdiction to condition a project or approve a
15 project. What they can do is make a finding of
16 whether or not it is consistent with that plan.

17 In our case the City of Blythe can then
18 take a look at that finding and agree with it, or
19 disagree with it. And if they disagree with it,
20 there are some implications from a liability
21 standpoint from the City disagreeing and
22 overriding the Airport Land Use Commission.

23 The City of Blythe has told us that they
24 will, whether there's a finding of consistency or
25 not, that they will appropriately condition the

1 project or override that finding.

2 COMMISSIONER LAURIE: If the City has to
3 override, when would that be agendized to be
4 considered?

5 MR. GALATI: That's something that I
6 can't answer right now. But they've told us it
7 would shortly after the Airport Land Use
8 Commission meeting, which is on October 19th.

9 Now, that's the worst case scenario from
10 the project applicant standpoint. We've also met
11 with the Airport Land Use Commission and have
12 agreed to have certain conditions.

13 For example, one of the issues is
14 reflective surfaces. The Energy Commission, under
15 the visual resources conditions, has a color plan
16 and a scheme that must be submitted ahead of time.

17 We've agreed to also allow the airport
18 operator to review it to make sure there's no
19 reflective surfaces.

20 So we're trying to dovetail the concerns
21 with, for example, biology; the ability -- if the
22 ponds attract birds, we're going to be doing some
23 counting and things like that.

24 We think that we have a very good chance
25 on October 19th of being able to have the Airport

1 Land Use Commission find it is consistent based on
2 some recommended conditions. At that point we
3 would be offering them in either testimony, that
4 they be incorporated into the Commission's
5 licensing process.

6 COMMISSIONER LAURIE: If you have to go
7 to override, on October 20th I would ask that you
8 provide staff with the legal authority that allows
9 the City to override. I'm assuming that's a
10 Government Code section. I don't know what that
11 is. So, I'd ask you to provide that, please.

12 MR. GALATI: Actually I'll go ahead and
13 provide that to staff -- I'll provide that to
14 staff now so that they can have a chance to review
15 that, after the hearing.

16 That is actually a cross-over. We've
17 handled that in land use, and I believe staff's
18 handled that in traffic and transportation. But
19 the issues are basically the same.

20 We've worked out all the differences on
21 every other area. I'd like to talk to you a
22 little bit about biological resources. I've
23 already updated you on the biological opinion and
24 the Division of Fish and Game's consistency
25 finding.

1 At the last workshop we had some good
2 discussions with staff regarding habitat
3 compensation for the desert tortoise. That
4 compensation, we have agreed on the amount of
5 acres that need to be purchased for compensation,
6 both for the project site, and a little part of
7 the pipeline, which all the biologists have agreed
8 those areas.

9 We've agreed on that to be 77.25 acres.
10 The only question is how much -- we've also
11 agreed, excuse me, on a one-to-one ratio for the
12 low quality of habitat to buy high quality habitat
13 at a one-to-one ratio.

14 What we haven't agreed on is the cost,
15 because there hasn't been a cost analysis done
16 yet. We understand from staff that there is a
17 nonprofit agency organization who would like to
18 purchase some land. They don't currently have any
19 holdings in a particular area.

20 And our concern was that the endowment
21 costs and the administrative costs, if those are
22 similar to what's being done in, for example, the
23 Low Kern National Preserve, we don't have any
24 discrepancies with staff's recommendation on the
25 actual cost. We just want to see the breakdown of

1 how the administrative and endowment costs, where
2 they come from.

3 I think staff has done its best to
4 estimate, but even in the staff report they
5 recommend now that the total price has not been
6 determined. But that's, although that sounds like
7 an outstanding issue, it's something I think can
8 be easily resolved.

9 The other issue was there was some
10 additional mitigation that I think staff and U.S.
11 Fish and Wildlife and CDFG were discussing on the
12 possibility of the effect of these evaporation
13 ponds on invertebrates and on birds.

14 And there were some ideas put forth in
15 the workshop that weren't in the PSA that we agree
16 in concept, and we just want to reserve the right
17 to see the actual language of the condition before
18 we agree with it.

19 So, it's very likely that we could see
20 the final staff assessment and the conditions and
21 have no issues with staff. If there's some
22 wording changes we would address those in our
23 testimony and hopefully it can be worked out at
24 evidentiary hearing.

25 But we don't have a discrepancy with

1 staff at this point with respect to biology.

2 COMMISSIONER LAURIE: Question, Mr.
3 Galati. And it partially relates to biology, but
4 it also goes back to water.

5 In your water replacement plan the 650
6 plus/minus acres that have to be taken out of
7 agricultural production, do you have to buy that?

8 MR. GALATI: We would either purchase
9 those rights, or we'd lease them, yes. So one way
10 or another we're paying for that, correct.

11 COMMISSIONER LAURIE: So, would you
12 purchase the water rights, or would you purchase
13 the land, itself?

14 MR. GALATI: We're not intending to
15 purchase the land, correct? There is the
16 possibility that we may purchase a piece of land
17 as part of the program, but our intention is not
18 to purchase the land and hold the land. It is to
19 hold PVID's water entitlement.

20 And that's -- Commissioner Laurie,
21 that's where, I think, the effect of that is where
22 we have some discrepancies in the land use
23 section, is does that cause an impact of which the
24 project should mitigate.

25 And I don't know if we want to go into

1 that here at this stage. We could if you're
2 interested.

3 In staff's report there appears to be
4 some miscommunication on the transmission system
5 engineering. We don't see any issues with
6 transmission system engineering. We thought that
7 all issues were resolved at the PSA.

8 There's a comment about the project
9 intending to add duct firing to get to 620
10 megawatts. That's not the project we have before
11 you. That's not our intention. We have a 520
12 megawatt nominally rated project in front of you.
13 We have no plans to do that at this stage.

14 If we were to increase, or want to
15 increase the output, we would come before the
16 Commission with an appropriate application to do
17 so.

18 That leaves the Hearing Officer's
19 favorite portion, the schedule. The intent of the
20 schedule was we thought that there would be very
21 few issues or subject areas in which we would need
22 lengthy hearings.

23 And what we were proposing is that in
24 the areas where we have complete agreement with
25 staff, that we just submit those on declaration

1 with our testimony.

2 And then the hearings would be scheduled
3 to primarily focus on any areas where we didn't
4 have complete agreement with staff. And, again,
5 we're hoping that at best, I mean at worst case
6 there'd be two or three areas in which we would
7 need to have the Commission decide a discrepancy
8 between staff and us.

9 So, what we were hoping is, if on
10 November 1st we file testimony that the Hearing
11 Officer could begin writing the PMPD on those
12 areas that are not contested, subject to public
13 comment at the hearings.

14 But we didn't think that that would
15 create -- and we do realize this is an aggressive
16 schedule. And our construction schedule is such
17 that if we can get this license in December, first
18 part of January, we would begin construction
19 immediately and we could bring power in 2002
20 summer peak.

21 So that's why we have tried to
22 accelerate the schedule at this point. And that's
23 why we've tried to work out as much of the issues
24 as we could on conditions of certification within
25 the PSA workshop.

1 I think that concludes my not-so-brief
2 presentation.

3 HEARING OFFICER BOUILLON: Can I ask,
4 what is your construction schedule, the length of
5 time it will take to build this plant, as
6 proposed?

7 MR. GALATI: I'll let Mr. Cameron --

8 MR. CAMERON: Between, about 18 months.

9 HEARING OFFICER BOUILLON: Eighteen
10 months.

11 MR. CAMERON: The plan would be to
12 start, would be to mobilize, you know, shortly
13 after the license is issued. We have the
14 equipment, it's being manufactured right now.

15 We also have an EPC contractor that is
16 lined up and basically waiting. And they are
17 starting with engineering, as we speak.

18 MR. O'BRIEN: Does that construction
19 schedule of 18 months assume a typical eight-hour
20 workday, five days a week?

21 MR. CAMERON: It can either be a four
22 ten-hour shift, or a five-eight. There will be
23 some overtime, as necessary, to get certain
24 activities done that are critical path.

25 During startup and commissioning it will

1 probably be six to seven days a week.

2 COMMISSIONER LAURIE: Mr. Chairman, I
3 would have no problem taking as much evidence as
4 we can by stipulation. And I would encourage
5 that.

6 But I don't know how we do that without
7 having received the FSA, and then getting the
8 parties to so stipulate at a prehearing
9 conference.

10 So, sometime post-FSA I think we need a
11 prehearing conference to get all parties to
12 stipulate as to what's going to be done through
13 written testimony and what parties we need to call
14 as witnesses.

15 PRESIDING MEMBER KEESE: I would concur
16 with that, I believe. I think this is an
17 appropriate case for this, seeing no members of
18 the public in attendance, and the one formal
19 intervenor at this time is not here.

20 I do believe the other intervenor has to
21 be given an opportunity to deal with this issue.
22 So, I would -- does that sound realistic?

23 MR. GALATI: Yes, and what our intent
24 was is our testimony, for example, in the area of
25 worker health and safety, if the FSA comes out

1 just as we discussed and the issues are resolved,
2 as we expect them to, our testimony will be we
3 agree with staff's assessment.

4 So it will be an actual stipulation
5 right then on November 1st -- appropriately --

6 COMMISSIONER LAURIE: Because what we
7 don't want to get into is an evidentiary hearing,
8 and then find that there's a matter in dispute and
9 not have any witnesses to resolve it that day.

10 So, whatever stipulations are entered
11 into at the prehearing conference that's what we
12 go with, unless the Committee changes its mind,
13 which it's always free to do.

14 HEARING OFFICER BOUILLON: I was going
15 to add that, that regardless of what the
16 Commission Staff and the applicant agree to by way
17 of stipulation, even if you can gain the
18 acquiescence of the other intervenor, the
19 Committee, itself, may have some questions.

20 And so that's something that's going to
21 have to be worked out prior to the hearings so we
22 know, both what subjects have to have live
23 witnesses, and how long it's going to take for
24 hearings.

25 Because I'd indicate to all parties, as

1 at least our staff well knows, there are evermore
2 projects and evermore hearings. And Commissioner
3 resources are slim, at best. And trying to
4 coordinate hearing dates with their schedules is
5 very difficult.

6 So once we've set them, we sure hope we
7 can keep them.

8 MR. GALATI: Well, we'll make our
9 commitment to bring our experts in case, even in
10 areas in which we've had agreement with staff,
11 we'll make sure they're available at hearings for
12 any questions of the Committee, if that's
13 appropriate.

14 COMMISSIONER LAURIE: If you want to do
15 that, fine. But, Mr. Chairman, I expressly would
16 not ask staff to do that. That is, if there's a
17 stipulation then the whole idea is to not require
18 one to incur the cost of having all their
19 witnesses present if there's not going to be any
20 testimony.

21 PRESIDING MEMBER KEESE: I would agree
22 with you, Commissioner Laurie.

23 HEARING OFFICER BOUILLON: In addition,
24 I would encourage all --

25 PRESIDING MEMBER KEESE: May I make --

1 HEARING OFFICER BOUILLON: Sure.

2 PRESIDING MEMBER KEESE: As long as
3 we're talking about that part of the schedule,
4 this is a major problem for the Commissioners.
5 And it's becoming more of a major problem for
6 Commissioners.

7 If we set a hearing date or two dates
8 and we can't make it, that presents the
9 possibility that it will be months before we do it
10 again.

11 So, an extremely aggressive schedule is
12 probably not in anybody's benefit. An aggressive
13 schedule -- we're trying to expedite as much as we
14 can. And that's appropriate. But if we get to
15 the ragged edge you may find that everything
16 thereon is booked if we have to slip.

17 There's not going to be, you know, we've
18 looked at our schedules for other occasions, and
19 there is just not an ability to slip a day or a
20 week or two weeks. You're going to lose something
21 more than that.

22 So, I'm sure with our Hearing Officer
23 we'll be able to work out something here that we
24 can live with, and we'll all have to try to stick
25 with it.

1 HEARING OFFICER BOUILLON: Another thing
2 that I wanted to mention along that line is that
3 the fact that we are going to grant the petition
4 of the -- I forget the woman's name who has
5 intervened. Carmella Garnica.

6 And I would encourage the parties to
7 interact with her to narrow her areas of concern
8 to those issues in which she's truly interested.
9 And secure, if you can, her written statement of
10 acquiescence to a stipulation, if that can be
11 done.

12 And I would encourage it, since I
13 believe she will be unrepresented since she's
14 filed a hardship petition.

15 I'd encourage you also to work with the
16 Public Adviser's office to assist her in that
17 regard. And if you can narrow down her issues and
18 the extent of her participation on those issues,
19 it would help the Committee in determining how
20 much time's going to be needed to be allocated for
21 those issues.

22 Now, having said all that, we're going
23 to give the staff an opportunity to make its
24 presentation. And if you'd comment on the items
25 you had intended to comment on, and then your

1 reflections upon what the applicant has said in
2 this hearing.

3 MR. SHAW: Thanks, Mr. Bouillon. Air
4 quality --

5 COMMISSIONER LAURIE: Mr. Shaw, could
6 you put the microphone down a little bit; I don't
7 hear very well, and I need to -- these are very
8 directional microphones, so you really have to get
9 into it.

10 MR. SHAW: Okay, is that better?

11 HEARING OFFICER BOUILLON: Is it on,
12 even?

13 PRESIDING MEMBER KEESE: Check and see
14 if it's on.

15 MR. SHAW: The little light says it is.

16 HEARING OFFICER BOUILLON: Okay.

17 MR. SHAW: Gabriel Behymer is here to
18 respond to air quality, and I'd like Gabriel to
19 discuss that. Is it okay to handle it in that
20 way?

21 MR. BEHYMER: Good afternoon. Staff
22 agrees with the applicant on most of the points.
23 The one issue where we have a major disagreement
24 is on the South Coast for approval of the ERC
25 package.

1 In discussions this afternoon with the
2 Mojave Desert District, they've indicated they
3 will go ahead and publish their FDOC as the
4 applicant has indicated, later this week or early
5 next week.

6 However, the ERC package remains to be
7 approved by the South Coast Board. The ERC
8 package will not be a valid package until that
9 approval takes place.

10 And in discussion with engineers at the
11 South Coast it is not a given that the South Coast
12 will approve this package. There are some
13 reservations.

14 The South Coast Board approved the
15 package on the High Desert Project, and after that
16 approval they indicated they didn't want to do it
17 again, is my understanding.

18 COMMISSIONER LAURIE: Well, when you're
19 talking about the package you're referring to the
20 offset package?

21 MR. BEHYMER: Correct. The applicant is
22 proposing to buy approximately 250 tons of
23 volatile organic compound emission reduction
24 credits from South Coast District for transfer to
25 this project.

1 COMMISSIONER LAURIE: And it's your
2 position that we cannot approve the project
3 without the South Coast District signing off?

4 MR. BEHYMER: Correct. The emission
5 reduction credits cannot be transferred to this
6 project without the South Coast approval.

7 That is the only issue at this point in
8 time that remains.

9 HEARING OFFICER BOUILLON: When will
10 they make the determination?

11 MR. BEHYMER: South Coast Board hopes to
12 meet on November 17th. The agenda meeting will be
13 at the end of this month, and we'll know by the
14 first of November whether or not we'll be on the
15 agenda for the November 17th meeting.

16 The South Coast Board meets once a
17 month. So the earliest they will have an answer
18 is November 17th.

19 The Mojave Desert has indicated they
20 will publish their final determination of
21 compliance without the approval of the South Coast
22 Board, since my understanding is they feel that
23 they don't have control over that Board, so they
24 will publish without --

25 COMMISSIONER LAURIE: Well, by law what

1 do we need? Do we need the FDOC or do we need
2 South Coast District to sign off?

3 MR. BEHYMER: Before you can approve the
4 project or before you can publish --

5 COMMISSIONER LAURIE: Yes, before we can
6 approve the project.

7 MR. BEHYMER: We need South Coast to
8 sign off. The emission reduction credits cannot
9 be used until South Coast Board signs off on them,
10 until they approve the transfer.

11 MR. O'BRIEN: Does the applicant agree
12 with that?

13 MR. GALATI: Yes, we do agree, but we
14 would point out that we would have an FDOC and
15 we'd have the District representative to testify
16 to the contents of that FDOC at hearing. And that
17 we wouldn't need the approval of South Coast until
18 the Commission issues its decision. That that
19 would be our position.

20 MR. BEHYMER: The problem here, however,
21 is that the FDOC does not address this issue. It
22 is entirely -- the Mojave Desert District has said
23 that they have no control over this issue and
24 therefore they are essentially not commenting on
25 this issue.

1 And so until that takes place -- staff
2 is not comfortable publishing the final staff
3 assessment until this approval takes place.
4 However, since the FDOC will be published before
5 this approval takes place, staff will prepare the
6 air quality section, although I'll have to discuss
7 with my technical senior concerning when that
8 publishing date will happen.

9 COMMISSIONER LAURIE: Mr. Chairman, what
10 is of concern to me is my lack of clarity as to
11 what the legal requirement is to approve the
12 project. Do we need the FDOC, or do we need South
13 Coast to sign off on the package? I don't know
14 the legal answer to that, and I would like to know
15 the legal answer.

16 PRESIDING MEMBER KEESE: Did we have
17 agreement on that between the applicant and staff?

18 MR. GALATI: We do agree that the
19 Commission license wouldn't be effective or
20 operative until the ERC packages would be
21 approved.

22 As well as like all DOCs, there's a
23 condition that you must surrender these ERCs by a
24 certain date. We certainly couldn't start
25 construction if the Commission were to go forward,

1 we certainly couldn't start construction until
2 that ERC package was approved.

3 But one thing I would note, though, here
4 is Mojave Desert has approved the transfer from
5 their perspective. So they have looked at the
6 quantity and quality and offset ratio, and the
7 Commission -- and would testify to that at a
8 hearing on the competency of their --

9 COMMISSIONER LAURIE: But there is
10 disagreement. Staff has taken the view that we
11 may not license. It's staff's view that we cannot
12 condition the project on South Coast signing off.
13 That, in their view, is that sign-off has to occur
14 legally prior to licensing.

15 Your view is that it may not occur prior
16 to licensing.

17 MR. GALATI: I apologize, I misspoke.
18 We agree with staff that you can't issue the
19 license until approval, that is correct.

20 COMMISSIONER LAURIE: Until South Coast
21 approves?

22 MR. GALATI: Correct.

23 COMMISSIONER LAURIE: Okay.

24 MR. GALATI: But we're saying that we do
25 not need to delay the FSA and/or hearing because

1 you will have a full completed FDOC and a
2 representative of the Air District that would come
3 testify to it's contents.

4 COMMISSIONER LAURIE: Okay, so there
5 will be evidence. But you do concur that we
6 cannot issue a final decision until South Coast
7 signs off? So it's a question of how far we're
8 willing to go.

9 MR. GALATI: You bet. And what we would
10 propose is that when that decision is final from
11 the South Coast, we would ask that the record be
12 opened up to take evidence of that, and then the
13 record closed.

14 But that we should go forward on air
15 quality hearings because the District will be here
16 to talk, answer any other questions regarding
17 anything about that transfer.

18 MR. O'BRIEN: Does staff have any legal
19 concerns on going forward without a determination
20 from the South Coast Air Quality Management
21 District, or is staff's concerns, does it go to
22 some other issue that's not legal in nature?

23 MR. BEHYMER: Staff's concerns are more,
24 I suppose on a waste of time issue. If the South
25 Coast Board does not approve these ERCs then there

1 are very few other sources of ERCs in this area,
2 and it would be a very significant issue if South
3 Coast did not approve these ERCs.

4 This is the entire, essentially the
5 entire ERC package. And an entirely new --

6 COMMISSIONER LAURIE: Is there any
7 anticipation today that they -- do you have any
8 information in your hands today that would lead
9 you to believe that they would not approve it?

10 MR. BEHYMER: The engineers at South
11 Coast that I have spoken with have been very
12 vague, and they've indicated --

13 COMMISSIONER LAURIE: Very vague?

14 MR. BEHYMER: Very vague. And they
15 refuse to make any sort of prediction. However,
16 they have indicated that there is some reservation
17 on the part of some of the people who sit on the
18 board.

19 COMMISSIONER LAURIE: Okay.

20 MR. O'BRIEN: If we're leaving this
21 issue, I have a couple other air quality
22 questions.

23 Are issues pertaining to construction
24 emission impacts and commissioning emission
25 impacts, have those been resolved between the two

1 parties, staff and the applicant?

2 MR. BEHYMER: The issues relating to
3 construction emissions have been resolved. Staff
4 is satisfied with the modeling that the applicant
5 has done on construction emissions.

6 The issue regarding initial
7 commissioning, in discussions with the Mojave
8 Desert District staff has proposed implementing
9 approximately nine to 12 conditions of
10 certification -- proposing conditions of
11 certification that would govern initial
12 commissioning.

13 Mojave Desert has been very receptive to
14 this concept and we are in discussions finalizing
15 the wording. The applicant, I believe, has not
16 seen those conditions yet.

17 MR. GALATI: Our understanding from our
18 discussions with the District is that we'll be
19 willing to live with that the DOC says. The DOC
20 is going to address these issues.

21 And they have asked for some information
22 from us. We have complied with that, as well as
23 had ongoing discussions with them.

24 So, yes, we haven't seen those
25 conditions, but we have every reason to believe

1 that they're going to be something that we can
2 live with and move forward with.

3 MR. O'BRIEN: Okay, going back,
4 clarification on the construction emissions. Is
5 it staff's view that the construction emissions
6 will not lead to a significant impact or violation
7 of any air quality standard, therefore mitigation
8 is not necessary?

9 MR. BEHYMER: That is correct.

10 MR. O'BRIEN: Okay.

11 MR. BEHYMER: Staff did propose in the
12 preliminary staff assessment two air quality
13 conditions relating specifically to construction.
14 Staff's satisfied the wording of both of those,
15 with some minor changes in the second one,
16 concerning some operations, that will be detailed
17 fully in the FSA.

18 MR. O'BRIEN: All right. One other
19 question on air quality. During the course of the
20 proceeding, probably sometime in the last 60 days,
21 the National Park Service, on behalf of Joshua
22 Tree National Monument, sent a letter to the Staff
23 of the Energy Commission expressing interest
24 and/or concern in the project in terms of the
25 potential impact on the national park.

1 Is it staff's position that there will
2 be no significant adverse impact on the park due
3 to this project?

4 MR. BEHYMER: That is still under
5 investigation. However, a representative from the
6 park was at the preliminary staff assessment
7 workshop in Blythe and commented on the issue.

8 And it is staff's understanding that the
9 park representative and the applicant are in
10 discussions on this issue.

11 But staff is still examining whether or
12 not there will be an impact. It's unlikely, very
13 unlikely that there would be direct impact from
14 this project on that park.

15 MR. O'BRIEN: Okay, so one would expect
16 then, in the testimony presented by both the staff
17 and the applicant, that this issue will be
18 addressed?

19 MR. BEHYMER: Yes, correct.

20 MR. O'BRIEN: Okay.

21 MR. BEHYMER: That's the conclusion of
22 my comments on this issue. If there are any
23 further questions I'd be happy to answer them.

24 HEARING OFFICER BOUILLON: Commissioner
25 Laurie?

1 COMMISSIONER LAURIE: Thank you, that's
2 all I have.

3 MR. SHAW: I have one.

4 HEARING OFFICER BOUILLON: Mr. Shaw.

5 MR. SHAW: Gabriel, this was the first
6 day I've seen that the FDOC was coming out this
7 week.

8 MR. BEHYMER: In fact I called the
9 Mojave Desert Board at about 3:30 this afternoon,
10 and that is what they told me.

11 MR. SHAW: Can you write an FSA based on
12 what you have?

13 MR. BEHYMER: I believe so; I'll have to
14 discuss that further with my technical senior.

15 MR. SHAW: The reason I'm asking is
16 because we're trying to set the schedule, and see,
17 this was news to me.

18 MR. BEHYMER: If I receive the FDOC next
19 week and I've discussed with the engineer at the
20 District, we're going to meet concerning
21 conditions and to discuss those later this week,
22 possibly, or the next week before that is issued.

23 It should be possible to issue an FSA
24 shortly thereafter, however it will take a
25 reasonable amount of time to incorporate all that

1 text.

2 MR. SHAW: The concern is that's not
3 10/27?

4 MR. BEHYMER: Correct.

5 MR. O'BRIEN: I'm sorry, what was that
6 comment?

7 MR. SHAW: I cannot meet the 10/27 date
8 for -- we were proposing 10/27 for all other
9 issues, air quality, after receipt of the FDOC.
10 And I'm sorry we hadn't worked this out in
11 advance, because I was not aware of it in advance.

12 MR. O'BRIEN: Well, what date were you
13 assuming, when you talk about 10/27, as the date
14 the FDOC would be filed by the District?

15 MR. SHAW: Sorry, Mr. O'Brien. 10/27
16 was the rest of the FSA with air quality coming
17 after the receipt of the FDOC, which we were
18 assuming -- I was assuming, before today, was in
19 late November. That's what your document shows.

20 HEARING OFFICER BOUILLON: And now
21 you're saying you can get the FDOC much sooner,
22 right?

23 MR. SHAW: Right. But I'm just learning
24 that this afternoon. Gabriel and I have not
25 discussed it. And since we're trying to fix the

1 schedule while we're all sitting here, I want to
2 know what does it take --

3 MR. BEHYMER: I'd like to comment on
4 that shortly. In effect, if we issue an FDOC for
5 air quality prior to the approval of the South
6 Coast Board of the ERC package, what we'd be doing
7 is recommending conditions of certification
8 without a suitable offset package.

9 We would have to incorporate conditions
10 of certification that specifically state that if
11 this approval doesn't take place then everything
12 else would be invalid, or something to that
13 effect.

14 This is something that my understanding
15 is no other projects have done before. So
16 specific language will have to be worked out.
17 And, again, I will have to talk to the other
18 members of staff in the air quality unit
19 concerning what the general consensus and general
20 technical opinion will be on this issue.

21 MR. O'BRIEN: I need some clarification.
22 I'm confused. What date is staff proposing to
23 file the FSA based upon what you know today, a)?
24 And b), does that include the air quality section?
25 And if it doesn't, what date are you talking about

1 for air quality?

2 MR. BEHYMER: The air quality section
3 was proposed to be issued on December 1st if we
4 had to wait for the South Coast approval.

5 I talked to staff at the Mojave Desert
6 District at 3:30 this afternoon, a half an hour
7 ago, and they said that this morning the District
8 had decided to issue the FDOC without the approval
9 of South Coast District.

10 So staff does not know at this time what
11 the new date will be. I'll have to discuss that
12 with the other members of staff before we finalize
13 that.

14 HEARING OFFICER BOUILLON: Mr. Shaw, in
15 your statement for this hearing you said October
16 the 27th for the FSA on all issues except air
17 quality.

18 MR. SHAW: That's correct.

19 HEARING OFFICER BOUILLON: You also
20 indicated a period of some, I believe it was three
21 weeks after receipt of the FDOC to prepare the FSA
22 on air quality.

23 MR. SHAW: That's correct.

24 HEARING OFFICER BOUILLON: And does that
25 three weeks still stand assuming you get an FDOC

1 this week?

2 MR. SHAW: That's what I'm trying to
3 iron out. And the reason is just the approval
4 process internally in the siting office. And I
5 apologize for not having worked that out
6 beforehand, but this was news to me.

7 MR. BEHYMER: This is new information as
8 of about a half an hour ago. We'll have a date
9 worked out. Three weeks sounds very reasonable.
10 But I need to confirm that with my technical
11 senior.

12 HEARING OFFICER BOUILLON: In the legal
13 business we refer to this as late-breaking news,
14 and it's okay.

15 MR. GALATI: If I could just add some
16 clarification to that. The PDOC, there have been
17 very few comments other than what we addressed in
18 the PSA workshop which we agreed to address in the
19 FDOC with concurrence of staff. And these
20 conditions that staff has proposed.

21 So what they've seen in the PDOC should
22 be very similar to what they're going to see next
23 week in the FDOC.

24 We didn't have a formal intervenor. EPA
25 made comment on commissioning emissions. And CARB

1 made some comments that I think we have all
2 addressed.

3 So, we would hope that it would be
4 easier for staff, having seen the PDOC, and not
5 have a change substantially to the FDOC. To be
6 able to work off the FDOC.

7 And, again, if we went forward with
8 hearings with conditions of certification assuming
9 the transfer took place, that would, of course, be
10 the applicant's risk on this. Because if we
11 couldn't bring in the proof of that, that transfer
12 took place, we knew that we would be back filing
13 an amended offset program.

14 And an amended offset program would
15 trigger additional evidence and things of that
16 nature. We understand that risk and we're willing
17 to accept it.

18 PRESIDING MEMBER KEESE: And let me try
19 to muddle through here, my understanding.

20 You have identified the offsets?

21 MR. GALATI: Correct.

22 PRESIDING MEMBER KEESE: And if you have
23 the offsets?

24 MR. GALATI: Yes.

25 PRESIDING MEMBER KEESE: In hand?

1 MR. GALATI: Correct. We are waiting
2 for -- we have option agreements on, we're waiting
3 for the transfer for some of the offsets from
4 South Coast to be approved. Mojave has already
5 approved that transfer.

6 PRESIDING MEMBER KEESE: So they've been
7 approved locally. You have them lined up, but
8 you're waiting for the South Coast?

9 MR. GALATI: Correct.

10 PRESIDING MEMBER KEESE: Okay.

11 HEARING OFFICER BOUILLON: I want the
12 applicant also to understand it's not just you
13 taking the risk, because as both the Chairman and
14 Commissioner Laurie have noted, Commissioner time
15 is also extremely valuable.

16 So if we set some hearing dates and
17 those don't come through, we're also taking a
18 risk. And that has to be taken into account.

19 Mr. Shaw, as I understand it, three
20 weeks from today is Halloween, the end of the
21 month. When would you be in a position to say
22 when you could get an FSA out on all issues, given
23 the recent developments of this afternoon?

24 MR. SHAW: I would say three weeks after
25 receipt of the quote FDOC.

1 HEARING OFFICER BOUILLON: Does that
2 include two weeks, then, to prepare it and a week
3 for your internal administrative review?

4 MR. SHAW: Probably the opposite. One
5 week to prepare it, and two weeks for review.

6 MR. BEHYMER: I'd like to emphasize that
7 staff is not sure we can issue an air quality FDOC
8 without -- I mean FSA without South Coast approval
9 of this ERC package, since that has not been done
10 on a previous project, i.e., issuing an FDOC (sic)
11 without a suitable ERC package.

12 I will have to discuss that with air
13 quality.

14 COMMISSIONER LAURIE: That decision is
15 up to the project manager. And then also it's
16 certainly within the jurisdiction of the Committee
17 to let you know when we want the FSA. We can tell
18 you we want the FSA tomorrow.

19 MR. BEHYMER: That is true.

20 COMMISSIONER LAURIE: But if the project
21 manager is going to communicate with the Committee
22 and say we're not going to give you an FSA until
23 South Coast signs off, well, we're going to have a
24 position on that one way or the other.

25 So, although the interest of your office

1 is certainly relevant, what we really need is a
2 position of the project manager representing the
3 entirety of staff as to how that's going to affect
4 the scheduling of the FSA.

5 MR. SHAW: If I might comment. I'm
6 having difficulty seeing it as a final
7 determination of compliance if we don't have South
8 Coast. And, again, I apologize for not knowing
9 that before sitting here that the FDOC was going
10 to be issued.

11 I saw it in the writeup from Mr.
12 Grattan, but we'd not heard that. We'd been in
13 contact with the Air District last week.

14 MR. O'BRIEN: Well, maybe staff needs to
15 apprise the Committee as quickly as possible
16 regarding their position on this issue after Mr.
17 Shaw talks to division management.

18 And to the extent that the Committee is
19 of a different mind than the staff's
20 recommendation, the Committee can then inform the
21 staff of what it wants done on this.

22 MR. BEHYMER: Yeah, I apologize. That's
23 more or less the sentiment I was trying to convey.
24 Once I discuss this with staff's management, the
25 other members of the air quality staff, the

1 project manager, and of course, with the
2 Commission's input, we'll have a final date.

3 The representative of South Coast said
4 they decided this early this morning, and so we'll
5 have to evaluate that.

6 MR. GALATI: And if I could point out
7 that we are currently working with South Coast;
8 that we are scheduled for October 27th, the
9 economic subcommittee meeting. And then we will
10 be on the November 17th meeting.

11 South Coast, again it would be difficult
12 for South Coast engineers to be able to confirm
13 that. I will also tell you that again you will
14 have a District representative testify as the
15 applicability, the availability and the
16 appropriateness of those offsets to be used in the
17 District in which is issuing the DOC.

18 And I would also point out that there
19 have been conditional FDOCs where the Commission
20 has taken the conditional FDOC, gone to hearing,
21 and the condition's been satisfied.

22 I specifically point you to the case in
23 the Sunrise, where the record was opened up to
24 show the condition was satisfied.

25 Here we don't even have a conditional

1 FDOC. What we have is a full FDOC. And a
2 representative of that District able to testify to
3 it.

4 Now, again, we understand you can't
5 issue the decision, the actual license, until that
6 evidentiary record is complete. And we would
7 propose that we go forward because we're 99.9
8 percent there. And we send in the document. The
9 record opened up to receive the evidence that the
10 South Coast has approved the transfer. And then
11 we go forward.

12 And not to delay the project until that
13 transfer took place, because we do have the
14 District, and the District representative able to
15 testify to the DOC.

16 HEARING OFFICER BOUILLON: Thank you.
17 Any more questions on air quality?

18 All right, thank you very much. I thank
19 you for the late news.

20 MR. BEHYMER: Thank you.

21 HEARING OFFICER BOUILLON: Mr. Shaw,
22 would you like to continue?

23 MR. SHAW: Yes. Charlie, if you would
24 please address transmission system. Charlie
25 Vartanian.

1 We're trying to see if we can find the
2 staff person who did soil and water because we'd
3 like to discuss that with land use.

4 MR. VARTANIAN: I have no further
5 questions that I need to answer for preparation of
6 the TSE section of the FSA. But I am open to
7 receiving questions if there are any on the TSE
8 section.

9 PRESIDING MEMBER KEESE: I thought we'd
10 heard the applicant say they didn't feel there was
11 an issue?

12 MR. GALATI: We didn't feel that there
13 are any outstanding open issues on transmission
14 system engineering.

15 HEARING OFFICER BOUILLON: Is that what
16 staff is saying?

17 MR. VARTANIAN: Yes.

18 HEARING OFFICER BOUILLON: Do you have a
19 report from ISO?

20 MR. VARTANIAN: The ISO is not going to
21 be issuing a report specific to this project.
22 Western Area Power Administration will be both the
23 approving and analytic body for this project. And
24 they've issued their study report. And we're
25 going to treat their final interconnection

1 agreement and the provisions therein as their
2 final document.

3 PRESIDING MEMBER KEESE: Thank you, I
4 think that takes care of that one.

5 MR. VARTANIAN: Thank you.

6 MR. SHAW: Dick Anderson, bio.

7 MR. ANDERSON: I agree with what was
8 said earlier about biological resources. We have
9 been working well and come to agreement in concept
10 with the applicant, with the other agencies on all
11 of our issues.

12 We had some details to work out yet
13 which is going to take a little time.

14 The biological opinion from the U.S.
15 Fish and Wildlife Service may or may not be issued
16 by the time we're ready to -- the process, or at
17 least the timeline may move to certification.

18 But we have a relationship with the U.S.
19 Fish and Wildlife Service and the California
20 Department of Fish and Game. We plan to work
21 closely with them as we put together the final
22 pieces of the FSA and the conditions that will
23 address things like the desert tortoise.

24 And I feel confident that we will move
25 forward essentially hand-in-hand with them so that

1 by the time we're ready to, if this project was to
2 be certified, the biological opinion and Fish and
3 Game's determination of consistency would follow
4 shortly.

5 HEARING OFFICER BOUILLON: Let me ask
6 you a question about that. The biological
7 opinion, there's a statutory 135-day period that
8 Fish and Wildlife Service has to issue that
9 opinion.

10 When did it start to run, do you know?

11 MR. ANDERSON: I don't believe it has,
12 yet. The way that's initiated is a section 7
13 consultation; it's initiated by Western.

14 Western has submitted their biological
15 assessment. I think they've left a few things
16 out, and I think that's what the U.S. Fish and
17 Wildlife Service believes also.

18 Until they provide with the U.S. Fish
19 and Wildlife Service considers adequate the time
20 won't start.

21 And I think that what we will put in our
22 FSA will be -- they will find adequate. And that
23 will probably, if it's not used after the FSA
24 comes out by Western, we'll be in contact with
25 Western almost weekly so that they can incorporate

1 that if they would like to. It's something they
2 will have to talk to with the U.S. Fish and
3 Wildlife Service about.

4 HEARING OFFICER BOUILLON: Has Western
5 formally notified -- excuse me, has Fish and
6 Wildlife officially notified Western that their
7 submission was incomplete?

8 MR. ANDERSON: I don't know. I know
9 they have orally. They did that on October 3rd.
10 But I don't know if it's been done in writing. Do
11 you folks know?

12 HEARING OFFICER BOUILLON: Mr. Galati?

13 MR. GALATI: We don't believe that it's
14 been done in writing. What has happened here is
15 that they have communicated, as well as Greystone
16 Environmental Consultants has stepped up to the
17 plate and is helping them put together pieces that
18 may have been missing. So everybody is
19 coordinating together.

20 We may be, as soon as early, about
21 Thursday of next week, be able to hopefully hand
22 that thing to U.S. Fish and Wildlife Service in
23 the form that they want.

24 So, with respect, we did talk a little
25 bit about the statutory timeline and since the

1 issues on this project, most of the time, are not
2 worked out at the stage that the U.S. Fish and
3 Wildlife Service, we've agreed on the types of
4 mitigation and the concepts, other than some
5 specific wording and the actual dollar amounts.

6 But we've agreed on the amount and the
7 ratio with U.S. Fish and Wildlife. We think the
8 biological opinion will be done sooner than 135
9 days.

10 MR. O'BRIEN: Is this an issue then from
11 a project timing standpoint where it is likely
12 that the hearings will take place without an
13 opinion from Fish and Wildlife Service such that
14 the record might have to be reopened to take note
15 of the fact that there is an opinion from Fish and
16 Wildlife Service? Is that what -- I'd like to
17 know how both parties kind of see this getting put
18 into the record.

19 MR. GALATI: I think that we do not need
20 the entire completed biological opinion placed
21 into the record. And on other cases we've gone
22 forward with certification without the biological
23 opinion.

24 What we've had is a representative who
25 prepared the biological opinion, or who reviewed

1 it, compare it to the final staff assessment and
2 testify before the Commission that the conditions
3 are consistent and similar to the point that they
4 feel comfortable that the biological opinion, what
5 the Commission's doing and what the Fish and
6 Wildlife Service is doing is consistent.

7 And we couldn't start actual
8 construction and grading until the biological
9 opinion was completed so there'd be some assurance
10 that any minor changes would take place in the
11 biological opinion prior to any construction.

12 But in this case what we have is a case
13 that's ripe for this specific kind of thing,
14 because we have very few biological issues. And I
15 would again point to the Sunrise case which went
16 forward without the biological opinion. Susan
17 Jones from U.S. Fish and Wildlife testified at
18 that hearing, consistency with staff's report.
19 And so did CDFG.

20 HEARING OFFICER BOUILLON: Mr. Anderson,
21 you have any comments about that?

22 MR. ANDERSON: No, I agree. I think
23 that by the time we're moving a month or so beyond
24 the FSA, after the U.S. Fish and Wildlife Service
25 has a chance to look and review the FSA, we will

1 have had numerous additional conversations with
2 them, and we will be in agreement.

3 And when it's time to certify this
4 project, if it's going to be certified, if there's
5 not a biological opinion I believe that, you know,
6 my plan is to move forward with both Fish and Game
7 and U.S. Fish and Wildlife Service and have our
8 wording as identical as possible.

9 So we'll be working together on this.
10 And so I believe that somebody, a representative
11 from both of those agencies would feel at ease
12 testifying that they've looked at the FSA and what
13 they see is very very similar to what their belief
14 that the biological opinion will be.

15 MR. GALATI: And one minor point is that
16 the condition that we've already agreed to in the
17 PSA, which we assume will be exactly duplicated,
18 it requires the BRMP, the biological resources
19 monitoring-something-program, that requires
20 incorporation of the biological opinion and the
21 CDFG conditions so that there will be that
22 consistency were that subject to CPM approval, and
23 I think that also gives the Commission the comfort
24 that they're consistent.

25 HEARING OFFICER BOUILLON: Mr. Galati,

1 you've suggested November 8 and 9 for hearings.
2 Are you saying that a representative of the Fish
3 and Wildlife Service would be prepared at that
4 time to indicate that the staff's conditions of
5 certification are acceptable to them to meet the
6 matters that will be stated in their opinion?

7 MR. GALATI: I wasn't able to, at that
8 point, give them a time for hearings. But we
9 asked them if they could be available in early
10 November, and they thought that based on reviewing
11 the FSA, while the work they're doing right now,
12 assuming the biological assessment is given to
13 them soon, which is going to happen.

14 So I think they would be available early
15 on. And I think that has a lot to do with the
16 workshop where everybody got together and talked
17 about these issues on October 3rd.

18 So I think they would be available early
19 part of November to do that testimony.

20 HEARING OFFICER BOUILLON: Mr. Anderson,
21 do you agree?

22 MR. ANDERSON: I don't know. I'll have
23 to ask them. And I'll need to talk to them once
24 or more about our final FSA biology conditions to
25 make sure of that. But if they're in agreement, I

1 believe they might be ready. Later in November
2 would probably be more likely.

3 HEARING OFFICER BOUILLON: All right,
4 thank you, Mr. Anderson.

5 MR. ANDERSON: Thank you.

6 HEARING OFFICER BOUILLON: Mr. Shaw?

7 MR. SHAW: Yes, I'd like to do the land
8 use. Melinda Rivasplata is a consultant for us
9 for the section on land use, and it will intersect
10 somewhat with soil and water. Melinda.

11 MS. RIVASPLATA: Good afternoon. There
12 are two areas where I still have some uncertainty
13 for the land use issues, and Mr. Galati mentioned
14 one of them.

15 The issue of whether or not retirement
16 of 652 acres of agricultural land on the mesa
17 would constitute a significant impact to
18 agriculture.

19 I've consulted with Riverside County UC
20 Cooperative Extension, Peggy Mach, who has
21 considerable experience with citrus and tropical
22 fruit. And given that the commitment of resources
23 and funds is extensive in installing a lemon
24 orchard, which is the major crop that's of any
25 importance on the mesa, and given that the

1 magnitude of resources that has to be committed to
2 land to bring a lemon orchard into production, I
3 would consider that to be a significant impact if
4 652 acres of lemon orchards were removed from
5 production.

6 Now, the applicant hasn't really stated
7 that that is what will happen, but we do not know
8 which lands will be in the retirement program.

9 So I kind of have to approach it from a
10 worst case scenario and assume that if that were
11 to happen that would be a significant impact to
12 agriculture in the region.

13 COMMISSIONER LAURIE: What are the lands
14 identified?

15 MS. RIVASPLATA: Pardon me?

16 COMMISSIONER LAURIE: At what point are
17 the lands identified?

18 MS. RIVASPLATA: I don't know at what
19 point the lands will be identified. They haven't
20 been identified to date, and I had to do my
21 analysis based on some assumptions. And that was
22 one of the assumptions that I made just in order
23 to address the worst case scenario.

24 COMMISSIONER LAURIE: Mr. Galati?

25 MR. GALATI: Yes. They would be

1 identified prior to commercial operation. And
2 then every year thereafter. That's number one.

3 Number two, we have agreed at the PSA
4 workshop not to fallow previously irrigated lemon
5 orchard, so -- yeah, currently irrigated lemon
6 orchard.

7 So that is an issue that we thought,
8 based on what staff said about the possibility of
9 affecting that high value crop, that we would
10 address by agreeing to that.

11 HEARING OFFICER BOUILLON: Is it correct
12 to say that of the lands available for this
13 program, that includes some lands which have a
14 water entitlement that is not currently being
15 utilized?

16 MR. GALATI: I'm going to let Mr. Harvey
17 address that.

18 DR. HARVEY: Jeff Harvey again. Yes,
19 Mr. Bouillon, the requirements from the Bureau of
20 Reclamation and from the Palo Verde Irrigation
21 District were that we involve either actively
22 irrigated lands on the valley floor, which we
23 would do in the rotational fallowing scheme, which
24 obviously cannot involve trees. Trees have to be
25 watered all the time. You can't water them half a

1 year and not the other half.

2 So, we involve in that case only row
3 crops or alfalfa, those kinds of crops. And not
4 permanent crops.

5 On the mesa it could involve previously
6 irrigated lands, the lands that have a history of
7 irrigation, but that may not be in irrigation use
8 at the present time, nonetheless have full
9 entitlement to use of priority three water right
10 under Palo Verde Irrigation District within the
11 District.

12 Now, the lands on the mesa, the use of
13 those lands has shifted significantly over decades
14 with larger and lesser amounts of land in
15 irrigation. Right now they're in a period where
16 the amount of land on the mesa devoted to
17 irrigation is increasing.

18 In the past there have been uses or
19 irrigation uses of land that were no longer
20 economically viable to pump groundwater up to
21 support, for example, alfalfa, because of the
22 current crop price of alfalfa.

23 If the prices for alfalfa go up, then
24 that land would be irrigated again. If crop
25 prices for asparagus go up, that land would be

1 irrigated again. The economics of the crop have
2 to offset the pumping costs on the mesa, which is
3 why you do have variable use.

4 And it was actually requested by PVID
5 that we target some of those lands, and the Bureau
6 of Reclamation agreed that we target some of those
7 lands that hadn't been previously irrigated that
8 they don't want to have them irrigated again.
9 They want to have them taken out so that there
10 really is retirement of that water use. And that
11 that offsets ours.

12 HEARING OFFICER BOUILLON: From strictly
13 an economic standpoint, wouldn't it be cheaper for
14 the applicant to buy the rights to those lands,
15 rather than lands that are currently being
16 irrigated and utilized for agriculture?

17 DR. HARVEY: And that is what we're
18 pursuing. We don't have a deal locked up at this
19 time. We have specific lands that PVID has
20 directed us to, that the Bureau has indicated they
21 agreed were acceptable.

22 We're working on negotiating a deal.
23 Actually this is a market-based transaction, so
24 the details, as soon as they're revealed the
25 prices go up. That's the only reason that we

1 haven't submitted this.

2 As soon as we have a deal for those
3 lands -- we have indicated, though, that we would
4 not use currently irrigated orchard; we would not
5 use -- when I say that I want to just be cautious
6 that we don't exclude if there have been some
7 lemon orchards that the trees are still standing,
8 but they haven't been irrigated in two or three
9 years, and they are being left to die. Those
10 lands might be used.

11 I don't believe there are any lands like
12 that. I don't know of any land like that. So
13 there's nothing up my sleeve when I say the
14 currently irrigated lands.

15 We are not going to retire actively
16 irrigated lands on the mesa. We are not going to
17 retire actively irrigated lands on the valley
18 floor. Those would be rotationally fallowed.

19 And on the mesa, then, we are targeting
20 previously irrigated lands that we could retire
21 the irrigation rights on those lands for the life
22 of the project.

23 COMMISSIONER LAURIE: And who signs off
24 on your plan? Is it the Bureau of Reclamation
25 that has to approve it?

1 DR. HARVEY: Well, we have to submit it
2 to PVID first. Palo Verde Irrigation District has
3 agreed that they would have no objections to the
4 plan. They do not exercise jurisdiction over
5 groundwater, and they've made that very clear.
6 That's what I said in my earlier comments.

7 The Bureau of Reclamation is the agency
8 that has been recognized as having a law,
9 ordinance, regulation and standard. In this case,
10 their counting surface that defines the
11 relationship between groundwater and surface
12 water, is what's being applied as a standard here
13 that we are complying with.

14 We are assuring our water use is offset
15 so that we don't have a net increase of water use
16 from the Colorado River beyond what is now Palo
17 Verde Irrigation District's entitlement to it.

18 COMMISSIONER LAURIE: Okay, but is there
19 any governmental agency, the Irrigation District,
20 Bureau of Reclamation, Riverside Agricultural
21 Commission that will be looking at your plan and
22 say this looks good, and we make a finding that it
23 does not significantly impact the agriculture in
24 the county. Will any government entity be doing
25 that?

1 DR. HARVEY: Those are only the Bureau
2 of Reclamation, and then this agency, through its
3 licensing process and this process.

4 And one of the conditions that we've
5 agreed to modify to address concerns on
6 agriculture was an issue that came up with Lance
7 that maybe under Williamson Act. And what we've
8 agreed is that we would, number one, not target
9 those lands; but, two, if we had a land that was
10 under Williamson Act, we currently wouldn't
11 violate any provision under the Williamson Act,
12 and we would ask for that to be approved for that
13 land under the Williamson Act, from the
14 administrator of the Williamson Act. In that case
15 it would be Riverside County.

16 COMMISSIONER LAURIE: Well, if I were,
17 independent of this particular project, if I were
18 to ask, does any particular project significantly
19 impact agriculture I would look at some things.

20 I'd look at the quality of soil. I'd
21 look at what land is currently being utilized for.
22 Probably those two more than anything else.

23 And how do we do that if the lands
24 haven't been identified?

25 DR. HARVEY: Only by eliminating those

1 lands that are of prime concern for those kinds of
2 uses. And by stipulating that we will not retire
3 lands on the valley floor that are the primary
4 agricultural lands. We will rotationally fallow
5 instead.

6 And to the extent that we involve land
7 on the mesa that would be retired instead, those
8 will be previously irrigated lands. They will not
9 take actively currently irrigated lands out of
10 production.

11 COMMISSIONER LAURIE: Okay, next
12 question. Assume, for purposes of discussion,
13 that we find that there is a significant impact on
14 the environment. A) you can do a CEQA override,
15 is that correct?

16 MS. RIVASPLATA: Yes. Yes.

17 COMMISSIONER LAURIE: Or, two, you can
18 mitigate?

19 MS. RIVASPLATA: Right.

20 COMMISSIONER LAURIE: How would you
21 mitigate a significant impact on agriculture?

22 MS. RIVASPLATA: Well, in this case, we
23 would have no problem doing a condition of
24 certification condition that would preclude use of
25 lands that are currently in active agricultural

1 use on the mesa, which usually is in orchards.
2 And that's how it would be addressed in this case.

3 Because of the difficulties on the mesa
4 in farming, and I've talked to numerous people
5 involved with agriculture in that area, and
6 there's only a few ways that you can actually farm
7 and make money out there, and usually it's by
8 installing drip irrigation and growing lemon or
9 some sort of citrus. And that's the best way to
10 approach it.

11 Other attempts have been made with flood
12 irrigation and it just hasn't worked out too well
13 because of the porosity of the soil. And you
14 can't really grow alfalfa and those kinds of
15 things there very easily.

16 And there are extensive lands that have
17 been formerly farmed that are now fallow. And in
18 this case, I would not consider removing those
19 lands from agricultural use for the life of this
20 energy plant project a significant impact to
21 agriculture, as long as those lands would remain
22 available and would not be converted to some other
23 use, because they're now not being used for
24 agriculture.

25 COMMISSIONER LAURIE: Okay, but that

1 would be very speculative, would it not?

2 MS. RIVASPLATA: Yes. And that kind of
3 leads us to the next issue that we have a little
4 bit of a difference about.

5 And that is what happens to those lands
6 that are where the water rights have been leased
7 or purchased by the energy project for the
8 duration of the project? Would there be some
9 secondary or growth-inducing effect that would
10 somehow affect the use of those lands while
11 they're --

12 COMMISSIONER LAURIE: Well, how could
13 you do anything without water?

14 MS. RIVASPLATA: Well, I have contacted
15 the Riverside County Health Department who is the
16 agency that issues water well permits. And it
17 appears that there is nothing that would prevent
18 somebody from installing a water well on one of
19 those pieces of property outside the, shall we say
20 the jurisdiction of PVID, because they don't
21 monitor groundwater use.

22 And Riverside County could issue a water
23 well permit --

24 COMMISSIONER LAURIE: But wouldn't any
25 use have to be consistent with the City/County

1 general plan?

2 MS. RIVASPLATA: Yes. One of the things
3 I have to answer in discussing growth-inducing
4 impacts is does the project have characteristics
5 that may encourage and facilitate other activities
6 that could significantly affect the environment
7 either individually or cumulatively.

8 And that is the case. A lot of the
9 lands in the area are zoned A1, A2, which are
10 agricultural zones, or another zone was called
11 controlled development.

12 And the uses allowed in that zone are
13 pretty limited. And I would not have a problem,
14 or I wouldn't consider that to be a problem with
15 those lands, because if anybody came in and wanted
16 to put some other use on that property, they would
17 have to go through Riverside County and obtain a
18 zoning, rezoning or general plan amendment or some
19 sort of use permit. And I think that that would
20 be enough control.

21 But, since I don't know precisely which
22 lands would be involved, and I don't know the
23 zoning on those lands, a way to approach that
24 would be to just have conditions of certification
25 that say the lands involved must be of particular

1 zone, agriculture zone or a controlled development
2 zone.

3 COMMISSIONER LAURIE: Well, the other
4 thing I'd like you to consider is when Riverside
5 County would have done their general plan and
6 their zone, their EIR for their general plan would
7 have had to consider growth-inducing impacts. By
8 law.

9 So, I don't know when they did their
10 general plan, and I don't know what their EIR
11 looks like. But they would have examined growth-
12 inducing impacts for permitted general plan
13 designations and zoning.

14 So, I would suggest that normally I
15 would think that any permitted use has already
16 been examined for that purpose. And as you noted,
17 any other use would have to go through its own
18 environmental analysis, in which case it would be
19 examined.

20 MS. RIVASPLATA: Yes, that's essentially
21 what I'm saying, is that the permitted uses on the
22 agricultural zones and the controlled development
23 zone, in the County, in the agricultural zone, in
24 the City, some of the lands may be in the City,
25 too. The City of Blythe has agricultural zoning

1 within its city limits.

2 Those lands I have no concern about
3 because, as you say, they're limited, those uses
4 are so limited. Other zones there may be some
5 impetus for the land to be used for something
6 else, I don't know, a truck stop, something like
7 that, if that was allowed in that zone.

8 I mean that removes that land from
9 future agricultural use. The EIR of the general
10 plan for Riverside County, I believe is 1984, so
11 it's quite old. And I haven't seen the EIR, but I
12 don't know if you've ever seen their plan. I
13 don't think I want to see their EIR.

14 COMMISSIONER LAURIE: Well, how does --
15 Riverside County's EIR is 1984?

16 MS. RIVASPLATA: It's that old, and then
17 they have, over the years, done updates for, you
18 know, just particular amendments. And when you
19 look at one of the sections --

20 COMMISSIONER LAURIE: So, do they do
21 regional plans?

22 MS. RIVASPLATA: -- there's just a list
23 of amendments that goes on for pages. So, it's --

24 COMMISSIONER LAURIE: Did they do a
25 regional land plan?

1 MS. RIVASPLATA: They have some regional
2 land plans, though the one that's applying to
3 Blythe, it's an odd general plan. I don't know
4 how to explain it, but anyway, --

5 COMMISSIONER LAURIE: I'm surprised,
6 but, okay, --

7 MS. RIVASPLATA: -- so, you know, that's
8 my point. But I think that we can address this
9 with conditions of certification.

10 PRESIDING MEMBER KEESE: So what I hear
11 is if it's in an agricultural restricted
12 development zone you're not going to have a
13 problem?

14 MS. RIVASPLATA: Right.

15 PRESIDING MEMBER KEESE: If it's
16 something else, you might?

17 MS. RIVASPLATA: Right. But I think we
18 can address it with a condition of certification.
19 Since the point is to retire agricultural lands,
20 it would seem logical that you would target lands
21 zoned for agriculture.

22 MR. GALATI: Our only concern would be
23 that if there were a piece of land that was zoned
24 in such a way that it was being used for
25 agriculture, but could have industrial

1 development, that can take place today. They
2 could take that land out of production and they
3 could develop it in accordance with the zone.

4 The other question, this project doesn't
5 really remove a barrier to basically cause
6 development or incentivize development on that
7 piece of property. I mean I think you guys have
8 visited the City of Blythe. And I don't think the
9 growth demand is such that --

10 PRESIDING MEMBER KEESE: I'm shocked
11 that you found a desert tortoise that would walk
12 on that property.

13 MR. GALATI: Now, the other issue that I
14 wanted to point out that I think is very
15 important, is that it is true that somebody could
16 drill a well on a piece of land that we've
17 retired. And that they could get water from that.

18 But they would have to go through the
19 same process with the Bureau, and the Bureau's
20 accounting service, that we currently had to do
21 through or we couldn't have drilled a well on the
22 property and starting taking water out.

23 So, whether the Bureau steps in and
24 forces a small residential piece of property, or a
25 small residence to do what we had to do is, I

1 think, up to the Bureau.

2 But clearly if there were a subdivision
3 and they were going to support their project by
4 drilling wells to supply the subdivision, it would
5 be a CEQA-triggering event, and I guarantee the
6 Bureau would be very interested in that water.

7 COMMISSIONER LAURIE: Okay, well, I
8 guess I don't think I articulated very well. If,
9 because there's no agricultural use, a party by
10 right, because of the existing zoning, can build a
11 residential subdivision or an industrial plant or
12 anything else, under the current general plan and
13 zone designation, the growth-inducing impact would
14 have already been examined when that legal
15 authority for development occurred, 1984,
16 whenever.

17 Because they would have had to do an EIR
18 and growth-inducing impact analysis in 1984. And
19 I can't question whether or not that general plan
20 is still legally valid. There's no legal basis
21 for arguing that it is not.

22 If it's not authorized, then they have
23 to do the rezoning general plan and growth-
24 inducing impact on a specified project will be
25 examined.

1 So I guess what I'm saying, Mr.
2 Chairman, is I would not want to get hung up on
3 this question. If staff has a different view,
4 then that can be reported out in the FSA.
5 I'm just not interested in spending time
6 between staff and applicant arguing over it. If
7 they have a difference of view, great. They can
8 give it to us.

9 PRESIDING MEMBER KEESE: Thank you. I
10 think we've determined that part of the issue. Is
11 that -- is this tied in with other --

12 MR. SHAW: Rich, did you have any
13 comment? Rich Sapudar.

14 MR. SAPUDAR: I'm the soil and water
15 resources person assigned to this project. And I
16 think just a few things. As we're going through
17 the process of writing our FSA, we're looking at
18 certain aspects of the project to see exactly if
19 we understand how they're going to work, and
20 whether we can actually form an opinion on them
21 based on information we have.

22 And one of the items that we keep coming
23 back and discussing is the water conservation
24 offset program proposed by the applicant.

25 We haven't seen this program. We've

1 seen references to it in the application. We've
2 seen further discussion of it in the response to
3 comments. But we haven't actually seen the
4 program that was worked out between the PVID with
5 the input of the Bureau of Reclamation.

6 MR. GALATI: If I could just address
7 that. On August 9th it was an attachment to the
8 Bureau of Reclamation letter to the Commission
9 that -- to Mr. Therkelsen, setting forth how they
10 had no problems with it. And it was attached to
11 that letter, and that was docketed on August 9th.

12 MR. SAPUDAR: What was attached to that
13 letter was a page and a quarter discussion.
14 Obviously there's more to that program than just a
15 page and a quarter discussion. There's a lot of
16 details that were left --

17 MR. GALATI: Mr. Harvey will address
18 that.

19 MR. SAPUDAR: -- out, things that --
20 well, let me just give you an example of --

21 DR. HARVEY: I think I have a copy of it
22 with me --

23 MR. SAPUDAR: Well, let me --

24 DR. HARVEY: -- of what they approved
25 of.

1 MR. SAPUDAR: -- just go through why
2 we're at the point we're at right now, if I may.

3 For instance, some of the things we're
4 interested in are some of the things that overlap
5 with Melinda's land use aspects, and that is what
6 are the criteria for the lands that are going to
7 be included in this program. What type of
8 irrigation history do they have to have.

9 In some programs you see that they have
10 to be irrigated within the last five years to
11 qualify for conservation program. Sometimes it's
12 two out of five years, four out of ten years.

13 If the land hasn't been used for 20
14 years, and there's little likelihood that it's
15 going to be used in the future, is there any water
16 conservation.

17 These are the questions we ask
18 ourselves, and we find that the information we
19 have available on the program doesn't provide
20 that. Those are the type of details we'd want to
21 know.

22 The things that we've asked for and made
23 the applicant aware of that we're looking at is
24 what is the irrigation history of the lands that
25 are going to be included in this program. If not

1 specifically the lands, then the criteria for the
2 irrigation history. What type of cropping history
3 does it have.

4 So with regard to the details of the
5 program, that's the type of thing we're looking
6 for.

7 There's not a great deal of oversight.
8 The Bureau doesn't have to approve this program.
9 It's an agreement between the PVID and the
10 applicant. It was worked out with the agreement
11 of the Bureau, and for the record, with the
12 Bureau's involvement and the PVID's involvement,
13 it looks like the LORS issue's been addressed by
14 the program.

15 The Bureau feels that they can account
16 for the water use used by the project and assign
17 that to the PVID. And if it's offset by the PVID
18 then the entitlement's going to not be changed.
19 There will be no net water use by the project. So
20 as far as the LORS, we feel that the Bureau's
21 watermaster duties and the accounting necessary
22 that they have to do for the Colorado River has
23 been achieved.

24 What we don't see is that there are
25 several junior water right holders that are junior

1 to the Palo Verde Irrigation District. Those
2 water Districts include Coachella Irrigation
3 District, Imperial, the Bard Irrigation District,
4 and the Municipal Water District of Southern
5 California.

6 We haven't seen a discussion in the
7 water conservation plan that discusses if adverse
8 impacts to those subordinate water right holders
9 have been protected and conserved by the COP.
10 That's one of the things that we need to
11 understand a little bit better so that we
12 understand what type of impacts are possible.

13 PRESIDING MEMBER KEESE: Does that
14 obligation rest with the entities who have given
15 the approval of the plan?

16 I mean do they have any obligation to
17 watch out for neighbors?

18 MR. SAPUDAR: To our understanding, at
19 this time, no. The USBR looks after the
20 accounting aspects of the water use. And the PVID
21 is -- other external parties don't have to be
22 involved if it's an intradistrict transfer of
23 water, which is what's happening. All this is
24 occurring within the PVID. So there's not a lot
25 of external requirements for review.

1 I guess the one thing that we think it
2 might be unlikely, but in the case where one of
3 the -- what happens here is that whatever water
4 that PVID doesn't use, that much is available for
5 the subordinate water right holders to use. And
6 these are quantified amounts.

7 So whatever amount of water is not
8 conserved by the PVID will be less water that the
9 subordinate water right holders are going to use.

10 PRESIDING MEMBER KEESE: But, you know,
11 this seems -- I'm having difficulty understanding
12 the concept here. The District has an allotment
13 that they can take all of.

14 MR. SAPUDAR: Right.

15 PRESIDING MEMBER KEESE: And now they're
16 allocating part of it, and we're going to say when
17 they allocate that part, does that impact third
18 parties. I mean I'm not sure I see the nexus
19 here.

20 COMMISSIONER LAURIE: This is not
21 District water, right? This is not District
22 water?

23 MR. SAPUDAR: Yeah, after -- the water
24 that the subordinate water rights holders are
25 going to have?

1 COMMISSIONER LAURIE: No, no, no, the
2 water that this project is going to use is not
3 PVID water?

4 MR. SAPUDAR: Yes, it is. According to
5 the Bureau, the Bureau looks at this as they're
6 pumping groundwater that's derived from the
7 Colorado River. And the PVID has an allotment
8 from the Bureau for a certain amount of Colorado
9 River water. And what they're doing is they're
10 accounting for this --

11 COMMISSIONER LAURIE: Okay, well, then
12 I'm confused because I thought I heard her say
13 that groundwater is not under anybody's
14 jurisdiction, therefore it's not PVID.

15 MR. GALATI: What's happening here is we
16 are pumping groundwater, and for all intents and
17 purposes we are calling it Colorado River water,
18 correct?

19 COMMISSIONER LAURIE: Okay, so --

20 DR. HARVEY: It's being accounted for --

21 MR. GALATI: It's accounted for that
22 way.

23 COMMISSIONER LAURIE: Okay. And so PVID
24 does have decision making authority over your use
25 of this water?

1 MR. GALATI: Although they don't want to
2 get boxed into that corner, correct.

3 COMMISSIONER LAURIE: Okay, what formal
4 action will PVID be taking -- is their board going
5 to meet and say, we hereby vote to allow this
6 project to use 3000 acrefeet of our allotment?

7 DR. HARVEY: Yes, they've already taken
8 their action which was to review the water
9 conservation offset program, which is the page and
10 a half that's referred to here attached to the
11 Bureau's letter, which they also saw and reviewed.

12 And they said that that program did
13 satisfy their concerns for offsetting other
14 potential water use within their District lands
15 that could be irrigated within the District to
16 which they have an entitlement for irrigation that
17 will now be taken out of production.

18 COMMISSIONER LAURIE: This goes back to
19 the Chairman's question. Normally if a District
20 has jurisdiction and the jurisdiction says this
21 project is within our allotment and we find that
22 it's a proper use for this portion of our
23 allotment, therefore we're going to vote to
24 approve it, then that would normally say to us
25 that there's no impact. Because the District

1 having authority says this is our decision and we
2 vote to approve it.

3 DR. HARVEY: We are in a grey area here.
4 Because the District does not exert jurisdiction
5 over groundwater, they have no intention to exert
6 jurisdiction over groundwater in the future. The
7 Bureau does not exert jurisdiction over
8 groundwater at present, and has no other wells
9 that it regulates along the river with the
10 exception of a few wells that were put in
11 specifically right by the river to be accounted
12 for as part of a surface water entitlement.

13 COMMISSIONER LAURIE: Okay.

14 DR. HARVEY: So the Bureau has a policy
15 it's developing, and it has told the District it
16 is probably going to apply, in as little as the
17 next two years, although they've been a decade now
18 getting this far, the two years are not certain.

19 And it is against that contingency that
20 the Blythe Energy Project, requiring some
21 certainty for its water supply, worked with the
22 Bureau and worked with the District to develop
23 this offset scheme and to get the Bureau's
24 concurrence and the District's concurrence that
25 that offset scheme would satisfy their concerns

1 about the relationship of our groundwater use to
2 surface water entitlement. It is a tricky
3 question.

4 COMMISSIONER LAURIE: Is it staff's
5 position that the use of 3000 acrefeet of
6 groundwater, or whatever we deem the source to be,
7 is it your position that that is a significant
8 impact to be mitigated by the plan? Or is it your
9 view that it may not be a significant impact if
10 the plan is adequate? Or is it something neither
11 one?

12 MR. SAPUDAR: Yeah, I can answer that.
13 How we've looked at this is that if the
14 conservation plan does conserve water, does
15 conserve the amount of water that the plant's
16 going to consume, on a regional basis, as far as
17 the ground water region basis there, it would
18 probably be no net impact. That is they're not
19 using any additional water, the situation should
20 stay the same.

21 We have asked that they provide us with
22 additional information, which they have, regarding
23 the local impacts of their pumping. That is, are
24 they going to -- what's their draw-down effects,
25 well interference with adjacent wells, and we're

1 currently looking at that information.

2 With regard to the Bureau we did send
3 the Bureau a letter asking them to discuss their
4 jurisdiction, if any, over this water that the
5 project intends to pump.

6 And they basically came back and said
7 that they consider that water to be Colorado River
8 water. And in order to use Colorado River water
9 you need either a contract with the Bureau for an
10 amount of water, such as the PVID has, and the
11 other water right holders. Or you need an
12 agreement with somebody that does have a contract
13 with the Bureau, such as the PVID.

14 COMMISSIONER LAURIE: Do we have a
15 letter from the Bureau saying that?

16 MR. SAPUDAR: Yes, we do.

17 COMMISSIONER LAURIE: Okay, so the
18 Bureau says that they either want an agreement, or
19 they'd like to see an agreement?

20 MR. SAPUDAR: Right. And their
21 statement in their letter said that a water
22 conservation offset program such as discussed by
23 the applicant, will meet their requirements both
24 now and in the future.

25 COMMISSIONER LAURIE: Okay.

1 MR. SAPUDAR: And what our point is here
2 is we'd like to see the agreement, the details of
3 the agreement so we can understand how it's going
4 to work, so that we can make some type of educated
5 informed evaluation on whether it's going to
6 conserve the water that it says --

7 COMMISSIONER LAURIE: Does such an
8 agreement exist?

9 MR. SAPUDAR: Exactly.

10 DR. HARVEY: I think there's some
11 confusion here because what staff has seen and
12 what was attached to and referred to in the letter
13 by the Bureau is the agreement. There is not more
14 to come. That is the agreement that they've
15 addressed themselves to in their letter, and said
16 that an offset program like that envisioned for
17 this project will satisfy that requirement,
18 pertaining to the Colorado River entitlement to
19 the County. The July 17, 2000 proposed water
20 conservation offset program for the Blythe Energy
21 Project enclosed meets these criteria. And here
22 it is attached to their letter.

23 And it is all that they had to review.
24 It was negotiated over a period of about a year
25 and a half between Palo Verde Irrigation District

1 and the Bureau. And it is what the program is.

2 The program does not include more
3 specific criteria than previously irrigated lands.
4 That's the term that's used here. Doesn't say
5 within the last three years, the last 20 years,
6 last 100 years. It says previously irrigated
7 land.

8 COMMISSIONER LAURIE: Okay, --

9 DR. HARVEY: Now, in fact, we're
10 targeting some --

11 COMMISSIONER LAURIE: -- well, then
12 let's see if I understand. It's staff's view that
13 in order for you to make a finding of no
14 significant impact you find that information
15 inadequate and you're not in a position today,
16 based upon the submittal, to recommend such a
17 finding?

18 MR. SAPUDAR: Exactly. I think we're at
19 the point now where until we understand how the
20 project's going to work, what lands are going to
21 be included, how those lands are going to be
22 selected.

23 We've looked at the water offset number
24 per acre that they provided, and worked out with
25 the Bureau and the PVID, and our understanding

1 right now is that that number is appropriate.
2 They're talking about 4.6 acrefeet of water per
3 acre conservation for each acre that's taken out
4 of production. That's something that we think is
5 reasonable. So in that regard we don't have a
6 problem with that particular quantitative number.

7 We are interested, and just as land use
8 is interested, in knowing what types of lands, how
9 these lands are going to be chosen to be taken out
10 of production, and what would the water savings be
11 for those lands, considering that they have said
12 it's going to be 4.6 acrefeet per acre.

13 DR. HARVEY: The 4.6 acrefeet per acre
14 number was dictated to us by the Palo Verde
15 Irrigation District. It is the number that
16 they've used in two previous water transfers, one
17 involving San Diego Gas and Electric Company when
18 they were targeting a nuclear power plant back in
19 the '70s at this site. They still hold, the San
20 Diego Gas and Electric still holds those water
21 entitlements.

22 And there's a more recent experimental
23 water transfer program between Metropolitan Water
24 District and the Palo Verde Irrigation District
25 that also used that 4.6 acrefeet per acre number.

1 And it's a number that the District considers to
2 be extremely low and very conservative. They
3 didn't want it to be applied as a precedent. They
4 didn't know what other number to put as higher
5 that wouldn't be fraught with controversy, as
6 well. So they went with what had been applied in
7 the two previous cases.

8 The Bureau looked at that number, and
9 it's in the water conservation offset program that
10 they stipulated they believe met their criteria.
11 And so that is the number that's being used and
12 the reason that it was used.

13 PRESIDING MEMBER KEESE: So, let me ask
14 staff, in order to disagree with this -- you would
15 accept the program that comes in unless you decide
16 the District was just wrong? And then you would
17 recommend that we do something else?

18 The District, it sounds like the
19 District said this is okay with us. Now, what is
20 the hurdle for you to recommend to us that the
21 District was wrong? And I'm phrasing that right?

22 MR. SAPUDAR: We're not saying the
23 District's wrong. They've come in with a program
24 that's been worked out between the Bureau and the
25 District. And that probably meets -- obviously

1 does meet the requirements of the Bureau and the
2 District.

3 I guess as far as us we agree that if
4 the Bureau agrees that it meets the LORS
5 requirements for the Bureau, then we consider the
6 LORS requirements met.

7 On a resource issue, I guess what we're
8 trying to get a handle on is does this program
9 conserve water and how is it going to do it.

10 PRESIDING MEMBER KEESE: But isn't that
11 what the District said it did? That this program
12 conserves water? Replenishes what is being used?

13 MR. SAPUDAR: It doesn't replenish --

14 DR. HARVEY: Offsets.

15 MR. SAPUDAR: -- what's being used.

16 PRESIDING MEMBER KEESE: Offsets.

17 MR. SAPUDAR: It offsets that amount of
18 water that would normally be charged against the
19 District.

20 MR. GALATI: If I could add, if there
21 were no offset program would you say the use of
22 this water would be a significant impact without
23 the water offset program?

24 MR. SAPUDAR: Well, we would have -- if
25 there was no offset program what we would have

1 done is we'd have required the applicant to do a
2 regional groundwater modeling impact study that
3 would predict the withdrawal of 3000 acrefeet on
4 the region.

5 PRESIDING MEMBER KEESE: Um-hum.

6 MR. SAPUDAR: We didn't do that here
7 because we were anticipating that the water
8 conservation offset program would demonstrate that
9 that would happen.

10 PRESIDING MEMBER KEESE: But, and I'm
11 trying to avoid being evidentiary here, I'm trying
12 to understand, but at that point you're saying
13 even though the District thinks it's offset it, we
14 want to make sure so that we don't have to do that
15 other study, so that it isn't affecting somebody a
16 mile down, or I don't know how far, I don't know
17 how big this District is. But some other
18 District, to which this Colorado River flows,
19 also.

20 MR. SAPUDAR: Exactly. It's the LORS
21 issue we're satisfied with. It's the resource
22 issue and the impact issue that we just want to
23 make sure that the water conservation program is
24 going to conserve that much water. And --

25 MR. O'BRIEN: Excuse me, can I use an

1 air quality analogy then? I mean on air quality
2 offsets they go through five or six requirements.
3 Is it real, is it verifiable, et cetera, et
4 cetera.

5 It seems to me that you're raising the
6 same sort of issue in that the applicant has
7 proposed a program and staff is saying at this
8 point in time it isn't sure that that program will
9 accomplish what the applicant says it's going to
10 accomplish.

11 So, isn't the issue here then for the
12 applicant and the staff to come to some sort of
13 meeting of the minds, if that's possible, as to
14 whether or not what the applicant is proposing
15 can, in fact, be verified? Is that the issue
16 here?

17 MR. SAPUDAR: Pretty much, exactly
18 right.

19 DR. HARVEY: We believe that the
20 verification is as simple as the previously
21 irrigated lands, the 652 acres are, every year we
22 are required by the conservation offset program to
23 submit a report to PVID, the Bureau and the Energy
24 Commission with evidence that those lands have not
25 been irrigated in that year.

1 MR. O'BRIEN: Okay, let me make a point
2 on that. Staff seems to be inclined,
3 notwithstanding you've got 652 acres that you've
4 taken, quote-unquote, "out of production." Staff
5 is concerned that, in fact, maybe those lands
6 weren't irrigated in the prior five years, seven
7 years, what-have-you, such that by putting forward
8 the 652 you, in fact, are putting forward
9 something that there wasn't water use on.

10 I mean I seem to recollect that was one
11 issue that staff raised. So, there may be other
12 issues, but it seems to me those are the sort of
13 issues that need to be resolved.

14 MR. SAPUDAR: Yeah, that's the meat of
15 our question, basically. Is there conservation
16 occurring? If the lands haven't been irrigated in
17 the last 20 years, and there's no likelihood of
18 being irrigated in the future, is there
19 conservation?

20 That's something we're struggling with.

21 MR. GALATI: The only other thing I
22 would add to the analogy of air quality is it is
23 somewhat different than air quality because these
24 are actual entitlement; this is not like a permit
25 and you didn't use the full allocation, and

1 therefore that was a paper offset.

2 These are entitlement that PVID can use
3 at anytime. And economic changes to agriculture
4 in that valley occur sudden and rapidly. And so
5 if something wasn't irrigated in the last five
6 years, it's hard for anyone to predict that it's
7 likely to be irrigated.

8 All we do know is that there's water to
9 irrigate it. And if we prevent that from
10 happening by taking that water and it's allocated,
11 we have, in the long term.

12 PRESIDING MEMBER KEESE: I think that's
13 an argument for our hearing.

14 MR. GALATI: I'm sorry, I apologize.

15 PRESIDING MEMBER KEESE: I think it's,
16 you know, it's an interesting point, and it's a
17 point that is raised on many occasions, generally
18 in legislative hearings, as to, you know, why does
19 the Energy Commission rethink things that other
20 agencies do.

21 We've heard the point raised as to why
22 we do. And I think it sounds like we're going to
23 argue that in front of the Committee.

24 HEARING OFFICER BOUILLON: Let me ask a
25 quick question of the Project Manager. You

1 submitted a report on October 6th for this
2 hearing, and on page 2 of that, you make the same
3 comment that this witness has made regarding
4 examining the water use history of the lands to be
5 fallowed.

6 And then at the end of your report you
7 note that you can have an FSA out on that topic by
8 October 27th. Has anything that's been said here
9 today changed your estimate of when you can have
10 an FSA on this issue?

11 MR. SHAW: No.

12 HEARING OFFICER BOUILLON: So everything
13 else we've been doing is really argument,
14 evidentiary argument for which we're not having
15 any testimony today. Is that -- does anybody
16 disagree with that statement?

17 MR. GALATI: No.

18 PRESIDING MEMBER KEESE: This issue is
19 not going to be --

20 MR. SAPUDAR: Could I make one more
21 point if I could, and that's I think if we could
22 agree on what type of lands, what type of criteria
23 for the lands, what would be included. And they
24 follow some precedent, some water conservation
25 plans that have been used previously in that

1 District, such as the one they referred to as the
2 Municipal Water -- Metropolitan's Water District
3 plans, that would be something that we could say
4 that this has been agreed on before, there's
5 something of a precedent here. We'd feel better
6 about it at that point.

7 I think MWD's plan might list something
8 like within the last five years. There is a time
9 interval.

10 PRESIDING MEMBER KEESE: I mean this has
11 been a status conference, and I think -- I'm sure
12 both parties have heard what you've said.

13 MR. SAPUDAR: And just one other thing,
14 and that's regards other uses of the land. And I
15 think that's partially a zoning question, is this
16 land's taken out of agricultural production, and
17 at a savings of 4.6 acrefeet of water per acre.

18 If it's developed for other purposes
19 that consumes water, there is a question of well,
20 is it still saving, is it still conserving water.
21 And that might be a zoning issue, whether it's a
22 land use issue, that type of thing.

23 So, that's another little inconsistency
24 that we say, well, if that happens, is it still
25 saving water if they put a subdivision on there

1 that's using 1 acrefoot of water per family a
2 year?

3 It's not cut and dried, so.

4 HEARING OFFICER BOUILLON: I think we
5 heard that a few minutes ago.

6 PRESIDING MEMBER KEESE: We may hear
7 testimony on that, too.

8 (Laughter.)

9 HEARING OFFICER BOUILLON: All right.

10 MR. SAPUDAR: That's all I have.

11 PRESIDING MEMBER KEESE: Okay, thank
12 you.

13 HEARING OFFICER BOUILLON: Thank you.
14 Mr. Shaw, do you have anything else?

15 MR. SHAW: I don't have anything else,
16 Mr. Bouillon. The only concern that I don't have
17 sitting here had to do with the impact of the
18 quote, FDOC in terms of timing.

19 And, Mr. O'Brien, I'd certainly like to
20 discuss that with my management.

21 PRESIDING MEMBER KEESE: We had intended
22 to take the issue of timing under submittal.

23 And I think since there are a number of
24 things that are going to happen here in the next
25 few days, we would appreciate it if you get to Mr.

1 Bouillon immediately the actions that do take
2 place. Or inform him also if there's been a major
3 postponement.

4 MR. SHAW: That I will do, Mr. Chairman.

5 PRESIDING MEMBER KEESE: I think some of
6 the things are starting to settle here, but I'm
7 not sure that enough have settled that we can
8 really set the schedule right now.

9 HEARING OFFICER BOUILLON: However, I
10 would encourage the staff to get to work on that
11 FSA because it looks like we're going to require
12 it somewhere around the end of the month, as
13 suggested by the staff and the applicant, for that
14 matter.

15 So, don't wait to start the FSA until
16 you get a schedule.

17 MR. SHAW: We've received inputs from
18 some of the staff on the FSA already, preliminary
19 inputs which we reviewed. And I guess I said
20 earlier, and just like to make clear, we were
21 confident -- we, speaking for the staff -- of an
22 FSA being issued by the 27th with the exception of
23 air, when we walked in. And so the air was new
24 information.

25 HEARING OFFICER BOUILLON: I understand

1 that. And you know where my office is.

2 (Laughter.)

3 MR. SHAW: Yes.

4 HEARING OFFICER BOUILLON: We can talk
5 about the schedule anytime, and that goes for the
6 applicant, too. And anybody else who's listening.
7 I don't know if anybody has ever tuned in.

8 But anything that does come up, please
9 notify me immediately.

10 COMMISSIONER LAURIE: Just one final
11 note. Mr. Chairman, on the question of the
12 evidentiary hearing and where to hold it, I would
13 like some input from Ms. Mendonca. I have no idea
14 of the community interest.

15 If there is community interest, then --
16 and I certainly understand the challenges to hold
17 a hearing in Blythe, but if there is community
18 interest we may very well be obligated to do so.

19 And I don't know the extent of that.

20 PRESIDING MEMBER KEESE: Point well
21 taken. Does the applicant have a feeling for
22 that?

23 MR. GALATI: No, we don't. We hope to
24 be able to communicate with the intervenor, but by
25 and large, other than the miscommunication as to

1 another pipeline, we haven't had very much
2 community participation.

3 There was miscommunication, many people
4 showed up at the last public workshop down in
5 Blythe to protest a pipeline that was being built
6 by somebody else.

7 COMMISSIONER LAURIE: The project has
8 already been annexed by the City, is that right?

9 MR. GALATI: I think that's taking place
10 right now, the last hearing. But LAFCO -- the
11 City approved the annexation, went to LAFCO. They
12 approved. They did their environmental work,
13 approved it. It's back to the City. Expect
14 that --

15 COMMISSIONER LAURIE: And those are all
16 duly noticed public hearings?

17 MR. GALATI: Correct.

18 HEARING OFFICER BOUILLON: In fact, the
19 City's last public hearing is today or tonight?

20 MR. GALATI: It's today, yes.

21 COMMISSIONER LAURIE: Are you in a
22 position to docket the minutes or at least the --
23 oh, what do they call --

24 MR. GALATI: The record of decision?

25 COMMISSIONER LAURIE: -- some reflection

1 of the LAFCO action or City action?

2 MR. GALATI: Yes. LAFCO has been
3 docketed, and the City action that they take we
4 will docket right away.

5 PRESIDING MEMBER KEESE: Okay, I think
6 we're -- anything final?

7 MR. SHAW: I'd like to clarify one point
8 if I may, about City involvement. When we had the
9 evening meeting on the 19th there were about ten
10 to a dozen people from the community. And I met
11 many of them.

12 They were not specifically the other
13 pipeline. The other pipeline didn't come up until
14 the 27th when we continued it.

15 The chief voiced concern was the lady
16 who wrote the letter, Shirley Nash, and it was
17 about this applicant's pipeline, and the concern
18 that it might disturb the older pipeline in the
19 valley.

20 The folks talking about the 33-inch
21 pipeline called in on the phone, and there were a
22 number of them. And I do have the list. I think
23 it was about a dozen people. And that's where Ms.
24 Garnica spoke. They were concerned about that
25 pipeline and hadn't been notified. It just so

1 happens they were beyond the distance under which
2 they would have been notified.

3 We did hear them. The applicant and
4 everyone was patient, and we did address that
5 issue.

6 PRESIDING MEMBER KEESE: Thank you.

7 HEARING OFFICER BOUILLON: Before we
8 adjourn I'll ask if there's any members of the
9 public to comment, although I see none. We do, I
10 think, still have an open telephone line.

11 Hearing none, --

12 PRESIDING MEMBER KEESE: Hearing none,
13 we're adjourned.

14 (Whereupon, at 5:12 p.m., the status
15 conference was concluded.)

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CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Status Conference; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
status conference, nor in any way interested in
the outcome of said status conference.

IN WITNESS WHEREOF, I have hereunto set
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